



Brit. 154 K

Curran





Mr. Curran.

A NEW
AND
ENLARGED COLLECTION
OF
SPEECHES,
BY
THE RIGHT HONOURABLE
JOHN PHILPOT CURRAN,
LATE MASTER OF THE ROLLS IN IRELAND.

CONTAINING
SEVERAL OF IMPORTANCE,

IN NO FORMER COLLECTION;

WITH
MEMOIRS OF MR. CURRAN,
AND HIS PORTRAIT.

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MEMOIRS
OF
MR. CURRAN'S LIFE.

ON the 24th of July, 1750, JOHN PHILPOT CURRAN was born at Newmarket, an obscure town, in the county of Cork, in Ireland. His father, James Curran, though he only filled the humble situation of Seneschal of the Manor Court at Newmarket, was nevertheless a man of intelligence and education.

Though various conjectures have been thrown out on the pedigree of our celebrated orator, little is yet known on that subject with certainty. Mr. Phillips, in his *Recollections of Curran*, published in 1818, alluding to the descent of his friend, has the following observation:—"Strange as it may seem, their parental ancestor came over to Ireland one of Cromwell's soldiers, and the most ardent patriot she ever saw, owed his origin to her most merciless and cruel plunderer."—Mr. Phillips might with justice have added, that if plunderers always left such a progeny, the plundered country would find in the talents and patriotism of the descendant, at least some atonement, if not full compensation, for the rapacity and oppression of his ancestor. The services of men, pre-eminently great and good, like Curran, are worth any sacrifice, and are beyond all price. It is also pretty well ascertained, that the original name of Mr. Curran's ancestors was Curwen. His mother's name was Philpot, of an ancient and still respectable Irish family. She was a

woman of extraordinary powers of mind; the delight of her own circle, and the acknowledged arbitress and oracle of her neighbourhood. So much was Mr. Curran impressed with a sense of the obligations conferred on him by the transmission of her genius, that he used to say—"The only inheritance that I could boast of from my poor father, was the very scanty one of an unattractive face and person, like his own; and if the world has ever attributed to me something more valuable than face or person, or than earthly wealth, it was that another and a dearer parent gave her child a portion from the treasures of her mind." Even in childhood he caught the enthusiasm of his mother—would repeat her tales, re-echo her jests, and often afterwards, when he became the delight of the Senate, and the ornament of the Bar, did he boast, that any merit he had, he owed to the tuition of that affectionate, and gifted mother.

While yet a very little boy at a common school in New-market, the keeper of a street puppet-show arrived in the town, to the no small edification of the neighbourhood; and the feats of Mr. Punch, and the eloquence of his man, soon superseded every other amusement. On this occasion young Curran performed an exploit, which deserves to be recorded; as he used to say "it first proved his aptitude for oratory." Mr. Punch's prompter being taken suddenly ill, the whole establishment was threatened with immediate ruin. In this most trying emergency, little Curran proposed himself to the manager as a substitute for Mr. Punch's prompter. The offer was readily accepted; and, for a time, the success of the substitute was astonishing. Thus encouraged, the young prompter, before one of the most crowded audiences, began to expatiate on the village politics; he gave a picture of the fairs, told the wake secrets, and caricatured his hearers. From the tales of

private scandal, and the history of village amours, he turned with pointed ridicule upon the very priest of the parish! This was a dangerous topic, and produced such a general outcry, that one and all joined in passing sentence of banishment on Mr. Punch. The prompter, however, modestly chose to remain concealed, to avoid the honours due to his dexterity. Mr. Curran, in after-times, frequently declared, that he never produced such an effect upon any audience, as in the humble character of Mr. Punch's prompter.

But, of all the incidents connected with the history of Curran's early life, the following is the most extraordinary: and as it contributed to shape his future fortunes, it shall be given, as he is reported by Mr. Phillips, to have related it himself. Alluding to the time when this incident happened, which forms so interesting an era in his life, Mr. Curran says—"I was then a little ragged apprentice to every kind of idleness and mischief; all day studying whatever was eccentric in those older, and half the night practising it, for the amusement of those who were younger than myself. Heaven only knows where it would have ended. But, as my poor mother said, I was born to be a great man. One morning I was playing at marbles in the village ball-alley, with a light heart and a lighter pocket. The gibe, and the jest, and the plunder, went gaily round: those who won laughed, and those who lost cheated—when suddenly there appeared amongst us a stranger, of a very venerable, and very cheerful aspect. His intrusion was not the least restraint upon our merry little assemblage; on the contrary, he seemed pleased, and even delighted: he was a benevolent creature, and the days of infancy (after all, the happiest we shall ever see) perhaps rose upon his memory. God bless him! I see his fine form at the distance of half a century, just as he stood

before me in the little ball-alley, in the days of my childhood! His name was Boyse; he was the Rector of Newmarket: to me he took a particular fancy; I was winning, and was full of waggery: thinking every thing that was eccentric, and by no means a miser of my eccentricities, every one was welcome to share them, and I had plenty to spare, after having freighted the company. Some sweetmeats easily bribed me home with him. I learned from poor Boyse my alphabet and my grammar, and the rudiments of the classics: he taught me all he could, and then he sent me to the school at Middleton—in short, he made a man of me. I recollect, it was about five-and-thirty years afterwards, when I had risen to some eminence at the bar, and when I had a seat in Parliament, and a good house in Ely Place, on my return one day from Court, I found an old gentleman seated alone in the drawing-room, his feet familiarly placed on each side of the Italian marble chimney-piece, and his whole air bespeaking the consciousness of one quite at home. He turned round—it was *my friend of the ball-alley*! I rushed instinctively into his arms. I could not help bursting into tears. Words cannot describe the scene that followed. You are right, sir; you are right: the chimney-piece is yours—the pictures are yours—the house is yours: you gave me all I have—my friend, my father! He dined with me; and in the evening I caught the tear glistening in his fine blue eye, when he saw his poor little Jacky, the creature of his bounty, rising in the House of Commons to reply to a *right honourable*. Poor Boyse! he is now gone; and no suitor had a larger deposit of practical benevolence in the court above. This is his wine—let us drink his memory.”

This excellent man, and early patron of Curran, appropriated ten pounds a-year from his church living, to support his young friend at the free-school of Middleton. The

records of a school-boy's life cannot be expected to contain much deserving of observation. At this school he could not have been very idle, and he never was remarkable for industry; but as he could do as much in one hour, as most others could do in three, the stores of his mind, even in this early period of his life, are not irreconcilable with some negligence in his habits.

From the school of Middleton he passed on to Trinity College, Dublin, which he entered as a sizer, in 1769, being then nineteen years old—an age, at which the students of the present day have, for the most part, nearly completed their course. Here, it is scarcely necessary to inform the reader, he studied the classical writings of antiquity with great ardour and success, nor did his enthusiastic admiration of them ever after subside. His excellent mother earnestly desired he should take orders, and his friends had promised him a small living. In this plan of life he seems to have acquiesced, till, in the second year of his college studies, a trivial incident which occurred, determined him to prefer the bar to the pulpit.

For some defect in college duty, the censor, Dr. Patrick Duigenan, sentenced him, either to pay a fine of five shillings, or to translate into Latin a number of the Spectator. He chose the latter; but on the appointed day, the exercise was not ready, and an unsatisfactory excuse was assigned for the delay. For this second offence, he was condemned to deliver a Latin oration from the pulpit of the college chapel, in praise of discipline. He performed this task to the admiration of all, but Dr. Duigenan; who soon found in the young orator's mock model of ideal perfection, a keen and cutting satire upon himself. He had no sooner descended from the pulpit, than he was summoned before the Provost and Fellows, to account for his conduct. This he did in so ingenious a manner, that he was dismissed with a

slight reproof. His companions now flocked round him, and being informed of the particulars of his acquittal, and full of admiration at the extraordinary talents he had that day displayed, unanimously pointed out to him the bar, as the surest road to fortune. This incident fixed his choice, of which he never after repented.

Early in 1773, Mr. Curran having finished his college studies, went to London, and was entered a student of law, at the Middle Temple. He frequented a debating-society, composed of his fellow-students, and his first attempt to speak was in that society. He arose, and pronounced, "Mr. Chairman"—when feeling much embarrassed, his friends called out, "*Hear him! hear him!*" This cheer, so far from inspiring him with courage, increased his agitation; and he, who afterwards became the most eloquent and intrepid orator at the Irish bar, sat down in the utmost confusion, unable to utter another word. His successful essay was made in another society, called "*The Devils of Temple Bar.*" Here, one night, the debate having been opened, a wretched speaker then upon his legs, disliking certain tokens of dissent visible in Curran's countenance, suddenly attacked him under the appellation of *Orator Mum*, who, he doubted not, possessed wonderful talents for eloquence, although he would recommend him to show them in future, by some more popular method, than his silence. Stung by this taunt, Curran retorted by a storm of invective, which astonished his companions, procured him the honour of supping with the president of the society, and instantly secured him a high reputation for talent and eloquence. Mr. Curran regularly attended and spoke at different debating-societies, particularly at the celebrated Robin Hood, and on Sundays at the Brown Bear in the Strand, where religious questions were discussed. At this last society, as he uniformly supported the Catholic

claims, and wore a brown great coat over his black, he was taken for a priest, and designated the little Jesuit of St. Omers.

Mr. Curran was called to the Irish bar in Michaelmas term, 1775. The first brief he held was in the Court of Chancery. In making this his debut in the Courts, a feeling of embarrassment again overwhelmed him: he had only to read a few words from his instructions, which he pronounced in a voice faltering and inaudible. Lord Lifford, then Chancellor, in requesting him to repeat his words, and to raise his voice, so increased his agitation, that he became unable to articulate a syllable—the brief dropped from his hands, and a friend who sat beside him, took it up, and completed Curran's motion. From this inauspicious beginning, it cannot be wondered at, that for some time, his income from the bar was trifling and inadequate—the first year he received only eighty-two guineas in fees, the second between one and two hundred; they continued annually to increase, in a regular proportion.

It was in repelling attack, or in denouncing wrongs, that his spirit towered, and his eloquence shone unrivalled. In the case of a helpless Catholic clergyman, who brought an action and recovered damages from Lord Doneraile, for a disgraceful and cowardly assault upon his person, Mr. Curran was retained as the poor man's advocate, and in describing the unprovoked brutality of the assault, drew such a picture of Mr. St. Leger, who was his Lordship's relative and witness, as provoked a challenge. It was accepted, and Curran instantly went out. When both parties had taken their ground, Mr. St. Leger called on his adversary to fire. "No, sir," said Curran; "I am here by your invitation, and you must open the ball." St. Leger being nervous, and in a loud voice suddenly called on to fire, started in the act of firing; and having died soon

after, it was the common report in Munster, that he had been killed by the report of his own pistol. This event established Curran's reputation for courage, and, as he had volunteered his services in the cause of the injured clergyman, when no other counsel would assist him, he acquired a popularity among the people, which his subsequent manly exertions raised to an enthusiastic attachment, never shown to any man, since the days of Swift.

In the year 1779, Mr. Curran became member of a patriotic convivial society, known by the title of "The Monks of the Order of St. Patrick," founded in that year, by his learned and excellent friend, the Lord Chief Baron, Avonmore. This order was *commonly* called "The Monks of the Screw," and included men of the greatest talent in Ireland. When he had been about seven years at the bar, Mr. Longfield (afterwards Lord Longueville) had him returned to the House of Commons, with the celebrated Mr. Henry Flood, for the Borough of Kilbeggan, and about the same time he obtained a silk gown. In a succeeding parliament, he purchased his own seat for the Borough of Rathcormack; and, on all the great questions that affected the liberties and happiness of Ireland, he spoke with a hallowed fervor, while against the barbarous policy of the English Ministry towards his unhappy country, he poured out his indignation in various and vigorous invective, peculiarly his own. He never superintended the printing of any of his senatorial speeches, and the reporters of that day being wholly in the service of Government, mutilated and disfigured every production, to make it suit the taste and views of their employers.

In 1785, a quarrel took place between Mr. Fitzgibbon, then Attorney-General, and Mr. Curran, which originated in the House of Commons, and which materially injured the fortunes of the latter, during the remainder of his life.

They fought and parted with a mutual and settled dislike of each other—Curran, thoroughly despising the insolent domination of a man, whose rudeness was unenlivened by a ray of genius, and whose stern mind was unchecked by any sense of public decorum—and Fitzgibbon, as heartily hating Curran's unrivalled talents and inflexible patriotism. In 1787, Mr. Curran visited France, and the following year went to Holland. In 1789, in consequence of the King's illness, a Regency was contemplated, and Mr. Curran took a leading part in contending for unlimited powers to the Prince of Wales, as Regent.

His spirited conduct in the House of Commons, in 1790, drew from the satellites of power and corruption, menaces at once novel and alarming. This daring and ruffian attempt to awe the legislature of a country, called free, he noticed in the lofty tone of defiance, which concludes the report of his speech in this volume. In a few days subsequent, a man, who is described as a conductor of the press, a writer for the Government, its notoriously hired agent in the city, and its reporter in the House of Commons, in consequence of observations that fell from Mr. Curran on the prodigality of Government, in rewarding such a man with the public money, for such vile services; this despicable and desperate tool, encouraged by a consciousness of impunity, had the daring audacity to come within a few paces of Mr. Curran in the most frequented part of Dublin, and shake his stick at him, in too threatening a manner to be misunderstood. Disdaining to chastise the outrage in the person of a worthless individual, whom he justly considered beneath his resentment—he sent a friend to Major Hobart, the Secretary of State, to express his expectation, that the Major would mark his sense of such an indignity offered to a Member of Parliament, by one of his official servants, in the dismissal of such a man from his service. Major Hobart

replied, he had no power to dismiss any man from the public service, and coolly contented himself with referring Mr. Curran to the House of Commons, for redress of the alleged breach of its privileges. Mr. Curran, who knew well the character of the House of Commons, and the sort of redress its pensioned majority was likely to afford him, charged the Major with pitiful and insulting evasion. Further correspondence ensued between Mr. Curran and the Major, which at last terminated in a duel, without any personal injury to either party.

Mr. Fitzgibbon being elevated to the peerage, and made Lord Chancellor of Ireland, evinced by his conduct to Mr. Curran, that his enmities were as lasting as they were rancorous. He did all he could to discountenance him in his profession, and clients feared to entrust their interests to an advocate, who it was clear to all, had not the ear of the Court. Mr. Curran sustained an immediate decrease of a thousand a year in his income, and the total amount of his loss during the Chancellorship of Lord Clare, he estimated at thirty thousand pounds. Diminished practice afforded Mr. Curran scarcely any opportunity for expressing his just resentment against his powerful and implacable enemy, until the rights of the Sheriff and Commons of Dublin, to the election of Alderman Howison to be Lord Mayor, was brought before the Privy Council, where Lord Clare presided. On this occasion, the Council Chamber being thrown open, as a public Court, was crowded with the most opulent and respectable citizens of Dublin. Mr. Curran appeared to support the election of Alderman Howison, which he did in a most luminous and eloquent speech—drawing a picture of a former Lord Chancellor, pictured so entirely to the life of his embarrassed and irritated enemy, that Lord Clare, with the countenance of a fury, was compelled to writhe in helpless agony before him. This masterpiece of matchless invective is preserved entire in the present volume.

In the year 1794, Ireland presented a scene of misery and suffering, not to be described. The discontents arising from a system of misrule, almost without parallel in the history of civilized man, and the barbarous determination of the rulers of that country to crush all attempts at Reform, at last goaded on the unhappy people to acts of open resistance. Mr. Hamilton Rowan was prosecuted by the Government for a seditious libel, and Mr. Curran was selected to defend him. His speech upon that occasion has been considered as one of his ablest efforts at the bar. It excited enthusiastic applause from a crowded audience; and when he left the Court, he was so idolized by the populace, that they drew him to his home in triumph. The Jury, however, whose purity was strongly suspected, found Mr. Rowan guilty, and he was sentenced to fine and imprisonment.

At this time the Government of Ireland had, by titles, grants, and pensions, secured the support of almost all the talent at the Irish bar—but Curran was not to be purchased; and while the mighty powers of his mind could be freely exercised in unravelling the crafty but profligate measures of the day, fears were naturally entertained for the success of ministerial machinations. On every trial, either for sedition or treason, where Mr. Curran was engaged, whether the verdict was guilty or not guilty, the panders of power had the mortification to find, that the magic of his eloquence procured popular sympathy for the accused, and popular odium for the accuser. It had been long known that power could not intimidate Curran; but it was thought the advice of a friend might have influence enough to detach him from the course he was pursuing, in defending the malcontents. Accordingly, about this time, Mr. Wolfe, afterwards Lord Kilwarden, paid him a friendly visit, while on a bed of sickness, and offered him honours and rewards without stipulation, if he would abandon the victims of power to their fate.

“ You have attached yourself,” said the Attorney-General, in a mild and earnest tone of friendship, “ to a desperate faction, that will certainly abandon you at last.” Mr. Curran, affected by Mr. Wolfe’s kindness, but with no intention to follow his advice, replied—“ that he knew better than his friend could do, the men with whom he associated; that they were *not* a desperate faction; that *their* cause was that of *Ireland*; and that even though it should eventually be branded with the indelible stigma of failure, he should never regret that it was with such men, and with such a cause, that he had linked his final destinies.”

Mr. Curran next defended the Rev. William Jackson, a clergyman of the Church of England, accused of high treason, in the year 1794. Jackson was found guilty on the evidence of a wretched man, called Cockayne, who had been his solicitor and confidential friend, and whom Heaven, in its inscrutable decrees, still permits to rank among the living. This trial was rendered memorable for more reasons than one—it was the first of the kind that had occurred in Ireland for a century, and it produced that astonishing decision of the Court, which established as law, the tremendous doctrine—that, in Ireland, *one* witness is sufficient to convict a prisoner, on a charge of high treason. It was for this reason, that Mr. Curran, with a warmth of feeling, and energy of language, becoming the occasion, emphatically observed, in his speech—“ that the breath which cannot taint the character of a man in England, shall, in Ireland, blow him from the earth.”*

* On the 30th of April, 1794, when Mr. Jackson was brought up to receive sentence of death, he was observed to support himself against the dock: his frame was perturbed, but his mind collected; he beckoned one of his counsel to approach him, and making an effort to squeeze him with his damp and nerveless hand, whispered in accents of mournful triumph, the dying words of Pierre,—

“ We have deceiv’d the Senate.”

On the 22d of December, 1797, Mr. Peter Finnerty was put to the bar, charged with the publication of a libel in the Press newspaper, against Earl Camden, then Lord-Lieutenant of Ireland. Mr. Curran displayed such extraordinary resources of mind, in his address to the Jury, on behalf of Mr. Finnerty, as surpassed expectation. He had no time allowed him even to read his instructions, much less for studied preparation; for it was not till a few minutes before

At this moment the Attorney-General came in, and called upon the Court to pronounce judgment upon him. Accordingly, he was set forward to the bar, and presented a spectacle equally shocking and affecting. His body was in a state of profuse perspiration; on his hat being removed, a dense steam was seen to ascend from his head and temples; minute and irregular movements of convulsion were passing to and fro upon his countenance; his eyes were nearly closed, and, when at intervals they opened, discovered by the glare of death upon them, that the hour of dissolution was at hand. When called on to stand up, he collected the remnant of his force to hold himself erect; but the attempt was tottering and imperfect; he stood rocking from side to side, with his arms in the attitude of firmness, crossed over his breast, and his countenance strained by a last proud effort into an expression of elaborate composure. In this condition he faced all the anger of the offended law, and the more confounding gaze of the assembled crowd. The Clerk of the Crown now ordered him to hold up his right hand; the dying man disentangled it from the other, and held it up, but it instantly dropped again. Such was his state, when in the solemn simplicity of the language of the law, he was asked, "What he had now to say why judgment of death and execution thereon, should not be awarded against him, according to law?" Upon this Mr. Curran rose, and addressed some arguments to the Court in arrest of judgment. A legal discussion of considerable length ensued. The condition of Mr. Jackson was all this while becoming worse. Mr. Curran proposed that he should be remanded, as he was in a state of body that rendered any communication between him and his Counsel impracticable: Lord Clonmel thought it lenity to the Prisoner to dispose of the question as speedily as possible. The windows of the Court were thrown open to relieve him, and the discussion was renewed: but the fatal group of death-tokens were now collecting fast around him; he was evidently in the final agony. At length, while Mr. Ponsonby, who followed Mr. Curran, was urging further reasons for arresting the judgment, their client sunk in the dock, and expired. An inquiry took place, and it was found he had swallowed a metallic poison.

the cause was called, that his brief was put into his hands. This fine extemporaneous effusion of forensic eloquence, he is said to have preferred to all his other efforts.

One of the most successful of Mr. Curran's efforts at the bar, was for Mr. Patrick Finney, in January, 1798. He had in fact to defend fifteen others, against whom there existed the same charge of high treason, and the same proof as against Finney. The principal witness for the Crown, was an infamous informer named O'Brien, one of those inhuman monsters who deal in blood, and to whom civil commotion supplies an abundant harvest. The infamy of this wretch's previous life, and the improbability of his story, were so satisfactorily proved, that the Jury, by an effort of firmness, very unusual indeed in those days, acquitted Finney. At the next sitting of the Court, the fifteen other prisoners were in consequence discharged. The reader may not regret being informed that the monster O'Brien was two years afterwards tried for murder; and by the operation of justice, Mr. Curran, who had rescued Finney from his fangs, was appointed to conduct the prosecution, and O'Brien was convicted and executed.

The year 1798 will be for ever memorable in the history of Ireland. It was in that fatal year, that a suffering people, long outraged, insulted, and oppressed, broke forth into open resistance. The excesses committed on both sides, during the short but dreadful struggle, are too shocking for description. Wanton and barbarous cruelties, perpetrated by a soldiery, let loose from all restraints, moral, military, or legal—whom General Abercromby, in the becoming language of cutting reproof, declared "to be in a state of licentiousness that rendered it formidable to all but the enemy," on the one hand—and acts of furious and frantic retaliation from a peasantry inflamed by revenge and despair, on the other—distinguished and disgraced this fatal conflict.

The numbers of the insurgents who perished in the field, on the scaffold, or were exiled, are reckoned at 50,000—the losses on the side of the Government, at not less than 20,000 lives. Thus a vast proportion of the most useful part of the population—men all in the prime and vigour of life, were suddenly cut off—men whose industry might, if directed by a wise and beneficent administration, have proved a mine of national wealth—and whose courage would have been an impregnable rampart of national defence, in the day of need. The public safety, however, being at last secured, it was resolved that the most conspicuous of the leaders in the late rebellion should be immediately brought to trial. The first persons, thus selected, were two young gentlemen, brothers, and members of the Irish Bar—Henry and John Sheares. Mr. Curran's eloquent defence of these unfortunate brothers, is given far more full and complete in this volume, than in any other publication that has yet appeared. This speech, delivered after midnight, has been considered as the most touching Mr. Curran ever pronounced, and it is certainly beyond all question, peculiarly pathetic and affecting.

To the trial of the Sheareses, which took place on the 4th of July, 1798, succeeded that of John M'Cann on the 17th of July, of William Michael Byrne on the 20th, and of Oliver Bond on the 23d of the same month. The two former were convicted and executed, but Mr. Curran's speeches, in both their cases, having exhibited a just, but frightful picture of the infamous Reynolds, the informer, who was chief witness for the Crown, have been carefully suppressed. The speech of Mr. Curran on the trial of Oliver Bond, was considered by the bar as the most powerful of his efforts upon the state trials of 1798, and will be found in this volume, fully reported.

Mr. Bond's trial was immediately followed by an act of attainder against three of the leaders in the late rebellion

who had previously perished, and whose property and rank marked them out as objects of posthumous vengeance. These were Lord Edward Fitzgerald, and Messrs. Cornelius Grogan, and Beauchamp Bagenal Harvey. The first of these was a young nobleman, whose high connexions and personal qualities produced in the public mind the most lively sympathy for his unfortunate end. He was one of those against whom the notorious Reynolds had given information. For some weeks, Lord Edward eluded the pursuit of the officers of justice. He was at length traced, however, to an obscure house in Dublin, and apprehended. He made a most desperate resistance, and shortly after died in prison, from the wounds he had received in the struggle. His widow and infant children petitioned against the bill of attainder, and in August, 1798, Mr. Curran was heard, as their counsel, at the bar of the House of Commons. On such an occasion, the subject was too technical to afford a wide range for eloquence; yet there will be found in his speech numberless passages of exquisite beauty and affecting pathos.

In 1798, a year full of distraction and peril in Ireland, Mr. Curran's life was often threatened by anonymous letters, and his conduct in defending the state prisoners, loudly condemned even in the House of Commons. In defence of himself, he said,—“ I am heavily censured for having acted for the prisoners in the late prosecutions. I feel no shame at such a charge, except that of its being made at such a time as this; that to defend the people should be held out as an imputation upon the King's Counsel, when the people are prosecuted by the state. I think every Counsel is the property of his fellow-subjects. If, indeed, because I wore his Majesty's gown, I had declined my duty, or had done it weakly or treacherously; if I had made that gown a mantle of hypocrisy, and had betrayed my client, or sacrificed him

to any personal view, I might, perhaps, have been thought wiser by those who have blamed me, but I should have thought myself the basest villain upon earth."

When the fury of civil discord had so far subsided as to allow an interval of repose, Mr. Curran, disgusted and shocked at the scenes of suffering and bloodshed he had been compelled to witness in his native country, passed over to England, and received, in the tranquil intercourse of private friendship, that solace to which he had been too long a stranger. On his return to Ireland, he found himself in a precarious state of health, but with a mind still in the full possession of intellectual vigour. It might be deemed tedious to notice in any detail his speeches from 1798, the year of the Irish rebellion, down to the year 1806, when, under Mr. Fox's administration, he became Master of the Rolls in Ireland. They were lighted up by the same eloquence, abounded with the same enchanting imagery, and were delivered with the same glowing ardour, which distinguished his preceding efforts in the senate and at the bar. There are no less than seven speeches, beside extracts from others, bearing the indubitable stamp of his superlative genius, which have for the first time been collected, and are inserted in this volume.

After Mr. Curran's appointment to the Mastership of the Rolls, his genius was necessarily confined within the limits, which the solemn decorum of the judgment-seat prescribed. Yet, even there, the reader will readily perceive, from the case of *Merry v. Power*, that nature would break out, in spite of the trammels imposed by official restraint. His judgment in that case, will be found full of just views, liberal sentiments, and pure political morality. It is much to be regretted, that this should be his only recorded decision, while he presided in the Roll's Court. His speech, too, delivered to the Electors of Newry, when a candidate

for their representation, during his Mastership of the Rolls, in 1812, and when in his sixty-second year, will show, that neither his fire, fancy, nor eloquence, had lost any thing of their meridian splendour.

In the year 1814, Mr. Curran resigned his place, as Master of the Rolls, and afterwards visited Paris. On his return to his native country, the melancholy temperament of mind, under which he had laboured for many years, had evidently gained ground; and the remainder of his life was passed chiefly between Dublin and London. On his way to the latter city, in the autumn of 1817, he was seized with paralytic symptoms. He arrived in London in September, with his spirits in a most distressing state of gloom, and continued in this dejected way, with little change, until the 8th of October, when he was alarmingly attacked by apoplexy. From that time to the period of his dissolution, he continued speechless, and only at a few intervals appeared sensible. He lay motionless, and seemed to suffer so little bodily pain, that the moment of his mortal expiration could not be marked by the relatives who surrounded his death-bed. He departed this life on the 14th of October, 1817, at his lodgings, No. 7, Amelia Place, Brompton.

Thus died, in the sixty-eighth year of his age, the Right Honourable John Philpot Curran—one of the most extraordinary men, of which any age or country can boast. He was undoubtedly the depositary of as rich a variety of talent, as could well adorn humanity. His patriotism was through life unsullied and unsuspected. His temper, as well as his talents, peculiarly fitted him for the corrupt and turbulent times, in which he was destined to act. Had he possessed less of the lion-heart, he must, with all his talents, have sunk under the formidable opposition he had to encounter. Those who witnessed his contests with the Bench, particularly with Lord Clare, were struck with

astonishment, at the intrepid boldness of the advocate, and the trembling confusion into which he threw the ermined oppressor. It was by his fearless courage, that he awed his powerful and implacable enemies into submission. It was by contending with the insolence of power in high places, that he acquired that supremacy of character, for which he stands unrivalled.

His eloquence too was original—it will be observed, in reading his speeches, that his frequent and sudden transitions from the lofty to the familiar, and from the solemn to the gay, are peculiarly his own, and often strikingly beautiful. But those who witnessed the speaking expression of his eye, the eloquence of his pause, and the commanding power of his action, make no scruple of asserting, that the bewitching charm by which he captivated his audience is lost in reading even his best speeches. He abounds so much in imagery, that fastidious critics have complained of its redundancy; but, let his figures be examined in connexion with his subject, and they will be found most skilfully and happily adapted to enforce his argument and illustrate truth, and to rouse the passions.

Curran has been compared with Erskine:—‘When Erskine pleaded, he stood in the midst of a secure nation, and pleaded like a priest of the Temple of Justice, with his hand on the altar of the Constitution, and all England below prepared to treasure every fantastic oracle that came from his lips. Curran pleaded, not on the floor of a shrine, but on a scaffold; with no companions but the unfortunate and the wretched, who were to be plunged from it hour by hour; and no hearers but the multitude, who crowded anxiously to that spot of hurried execution, and then rushed away, glad to shake off all remembrance of scenes which had agitated and torn every heart among them. He had no thought to study the cold and marble graces of scholarship.

He was a being embarked in strong emergency, a man and not a statue. He was to address men, of whom he must make himself the master. With the living energy, he had the living and regardless variousness of attitude. He skirmished round the field, tried every point of attack with unsuspected dexterity, still pressing on, till the decisive moment was come, when he developed his force, and poured down his whole array in a mass of matchless strength, originality, and grandeur. Where he could not impel by exhortation, or overpower by menace, he did not disdain to fling himself at their feet, and conquer by grasping the hem of their robe. For this triumph he was all things to all men. In Parliament he was the assailant most dreaded; in the Law Courts he was the advocate whose assistance was deemed the most essential: in both he was an object of all the more powerful passions of man, but rivalry;—and in both, his eloquence was always employed in contending for the rights of his country, and for the happiness of the human race.

May the present age and posterity be instructed and improved, by so rare and bright an example of talents and of excellence.

SPEECHES,

BY MR. CURRAN.

SPEECH,

COURT OF KING'S BENCH, MONDAY, MAY 17, 1802.

JOHN HEVEY, PLAINTIFF;

AND

CHARLES HENRY SIRR, DEFENDANT.

Assault and False Imprisonment.

FOR THE PLAINTIFF:

MR. CURRAN told the Jury that this was the most extraordinary action he had ever met with. It must have proceeded from the most unexampled impudence in the Plaintiff, if he has brought it wantonly; or the most unparalleled miscreancy in the Defendant, if it shall appear supported by proof:—the event must stamp the most condign and indelible disgrace on the guilty Defendant, unless an unworthy verdict should shift the scandal upon another quarter. On the record, the action, he said, appeared short and simple; it was an action of trespass, *vi et armis*, for an assault, battery, and false imprisonment. But the facts that led to it, that explain its nature, and its enormity, and of course that should measure the damages, were neither short nor simple; the novelty of them might surprise, the atrocity must shock their feelings, if they had feelings to be shocked. But, he said, he did not mean to address himself to any of their proud feelings of Liberty—the season for that was past. There was, indeed, he said, a time when, in addressing a

Jury upon very inferior violations of human rights, he had felt his bosom glow and swell with the noble and elevating consciousness of being a free-man, speaking to free-men, and in a free country; where, if he was not able to communicate the generous flame to their bosoms, he was not at least so cold, as not to catch it from them. But that was a sympathy, which he was not now so foolish as to affect either to inspire or to participate. He would not insult them by the bitter mockery of such an affectation; buried as they were, he did not wish to conjure up the shades of departed freedom to flutter round their tomb, to haunt or to reproach them. Where freedom is no more, it is a mischievous profanation to use her language; because it tends to deceive the man, who is no longer free, upon the most important of all points, that is, the nature of the situation to which he is reduced; and to make him confound the licentiousness of words with the real possession of freedom. He meant not, therefore, he said, to call for a haughty verdict, that might humble the insolence of oppression, or assert the fancied rights of independence. Far from it; he only asked for such a verdict as might make some reparation for the most extreme and unmerited suffering, and might also tend to some probable mitigation of the public and general destiny. For this purpose, he said, he must carry back their attention to the melancholy period of seventeen hundred and ninety-eight. It was at that sad crisis, that the Defendant, from an obscure individual, started into notice and consequence. It is in the hot-bed of public calamity, that such portentous and inauspicious products are accelerated without being matured. From being a Town-Major, a name scarcely legible in the list of public incumbrances, he became at once invested with all the real powers of the most absolute authority. The life and the liberty of every man seemed to be given up to his disposal. With this gentleman's extraordinary elevation began the story of the sufferings and ruin of the Plaintiff.

It seems, a man of the name of M'Guire was prosecuted for some offence against the state. Mr. Hevey, the Plaintiff, by accident was in Court; he was then a citizen of wealth and credit, a brewer, in the first line of that business. Unfortunately for him, he had heretofore employed the Witness for the prosecution, and found him a man of infamous character. Unfortunately for himself, he mentioned this circumstance in Court. The Counsel for the Prisoner insisted on his being sworn; he was so. The Jury were con-

vinced that no credit was due to the Witness for the Crown; and the Prisoner was accordingly acquitted. In a day or two after, Major Sirr met the Plaintiff in the street, asked how he dared to interfere in his business, and swore by God he would teach him how to meddle with "his people." Gentlemen, said Mr. Curran, there are two classes of prophets, one that derive their predictions from real or fancied inspiration, and are sometimes mistaken; and another who prophecy what they are determined to bring about themselves. Of this second, and by far the most authentic class, was the Major; for heaven, you see, has no monopoly of prediction. On the following evening, poor Hevey was dogged in the dark into some lonely alley; there he was seized, he knew not by whom, nor by what authority—and became in a moment, to his family and his friends, as if he had never been. He was carried away in equal ignorance of his crime, and of his destiny; whether to be tortured, or hanged, or transported. His crime he soon learned; it was the treason which he had committed against the Majesty of Major Sirr. He was immediately conducted to a new place of imprisonment in the Castle-yard, called the Provost. Of this mansion of misery, of which you have since heard so much, Major Sandys was, and I believe yet is, the keeper: a gentleman of whom I know how dangerous it is to speak; and of whom every prudent man will think and talk with all due reverence. He seemed a twin-star of the Defendant—equal in honour, in confidence; equal also—for who could be superior?)—in probity and humanity. To this gentleman was my client consigned, and in his custody he remained about seven weeks, unthought of by the world, as if he had never existed. The oblivion of the buried is as profound as the oblivion of the dead; his family may have mourned his absence or his probable death; but why should I mention so paltry a circumstance? The fears or the sorrows of the wretched give no interruption to the general progress of things. The sun rose and the sun set, just as it did before—the business of the Government, the business of the Castle, of the feast, or the torture, went on with their usual exactness and tranquillity.

At last Mr. Hevey was discovered among the sweepings of the prison; and was at last to be disposed of. He was at last honoured with the personal notice of Major Sandys.—“Hevey (says the Major), I have seen you ride, I think, a smart sort of a mare; you can’t use her here; you had better give me an order for her.” The Plaintiff, you may

well suppose, by this time had a tolerable idea of his situation; he thought he might have much to fear from a refusal, and something to hope from compliance; at all events, he saw it would be a means of apprizing his family that he was not dead:—he instantly gave the order required. The Major graciously accepted it, saying, “your courtesy will not cost you much; you are to be sent down to-morrow to Kilkenny, to be tried for your life; you will most certainly be hanged; and you can scarcely think that your journey to the other world will be performed on horseback.” The humane and honourable Major was equally a prophet with his compeer. The Plaintiff on the next day took leave of his prison, as he supposed for the last time, and was sent under a guard to Kilkenny, then the head-quarters of Sir Charles Asgil, there to be tried by a Court-Martial for such crime as might chance to be alleged against him.

In any other country the scene that took place on that occasion might excite no little horror and astonishment; but with us, these sensations have become extinguished by frequency of repetition. I am instructed that a proclamation was sent forth, offering a reward to *any* man, who would come forward, and give any evidence against the traitor Hevey. An unhappy wretch, who had been shortly before condemned to die, and was then lying ready for execution, was allured by the proposal. His integrity was not firm enough to hesitate long between the alternative proposed; pardon, favour, and reward, with perjury, on one side—the rope and the gibbet on the other. His loyalty decided the question against his soul. He was examined, and Hevey was appointed by the sentence of a mild, and, no doubt, enlightened Court-Martial, to take the place of the Witness, and succeed to the vacant halter.

Hevey, you may suppose (continued Mr. Curran), now thought his labours at an end; but he was mistaken: his hour was not yet come. You probably, Gentlemen, or you, my Lords, are accounting for his escape, by the fortunate recollection of some early circumstances that might have smote upon the sensibility of Sir Charles Asgil, and made him believe that he was in debt to providence for the life of one innocent, though convicted victim. But it was not so; his escape was purely accidental. The proceedings upon this trial happened to meet the eye of Lord Cornwallis. The freaks of fortune are not always cruel; in the bitterness of her jocularities, you see she can adorn the miscreancy of the slave in the trappings of power, and rank, and wealth,

But her playfulness is not always inhuman; she will sometimes, in her gambols, fling oil upon the wounds of the sufferer; she will sometimes save the captive from the dungeon and the grave, were it not only that she might afterwards recommit him to his destiny, by the reprisal of capricious cruelty upon fantastic commiseration. Lord Cornwallis read the transcript of Hevey's condemnation; his heart recoiled from the detail of stupidity and barbarity; he dashed his pen across the odious record, and ordered that Hevey should be forthwith liberated. I cannot but highly honour him for his conduct in this instance; nor, when I recollect his peculiar situation at that disastrous period, can I much blame him for not having acted towards that Court with the same vigour and indignation, which he hath since shown with respect to those abominable jurisdictions.

Hevey was now a man again—he shook the dust off his feet against his prison gate; his heart beat the response to the anticipated embrace of his family and his friends, and he returned to Dublin. On his arrival here, one of the first persons he met with, was his old friend, Major Sandys. In the eye of poor Hevey, justice and humanity had shorn the Major of his beams—he no longer regarded him with respect or terror. He demanded his mare; observing, that though he might have travelled to heaven on foot, he thought it more comfortable to perform his earthly journies on horseback. “Ungrateful villain,” says the Major; “is this the gratitude you show to his Majesty and to me, for our clemency to you? You shan’t get possession of the beast, which you have forfeited by your treason; nor can I suppose, that a noble animal, that had been honoured with conveying the weight of duty and allegiance, could condescend to load her loyal loins with the vile burden of a convicted traitor.” As to the Major, said Mr. Curran, I am not surprised that he spoke and acted as he did. He was no doubt astonished at the impudence and novelty of calling the privileges of official plunder into question. Hardened by the numberless instances of that mode of unpunished acquisition, he had erected the frequency of impunity into a sort of warrant of spoil and rapine. One of these instances I feel I am now bringing to the memory of your Lordship. A learned and respected brother barrister had a silver cup; the Major heard that for many years it had borne an inscription of “*Erin go brach*,” which meant “*Ireland for ever*.” The Major considered this perseverance in guilt for such a length of years, as a forfeiture of the delinquent

vessel. My poor friend was accordingly robbed of his cup. But upon writing to the then Attorney-General, that excellent officer felt the outrage, as it was his nature to feel every thing that was barbarous or base; and the Major's sideboard was condemned to the grief of restitution. And here (said Mr. Curran) let me say, in my own defence, that this is the only occasion upon which I have ever mentioned this circumstance with the least appearance of lightness. I have often told the story in a way that it would not become to tell it here. I have told it in the spirit of those feelings which were excited at seeing that one man could be sober and humane at a crisis when so many thousands were drunk and barbarous. And probably my statement was not stinted by the recollection, that I held that person in peculiar respect and regard. But little does it signify, whether acts of moderation and humanity are blazoned by gratitude, by flattery, or by friendship; they are recorded in the heart from which they sprung; and in the hour of adverse vicissitude, if it should ever come, sweet is the odour of their memory, and precious is the balm of their consolation. But to return: Hevey brought an action for his mare. The Major not choosing to come into Court, and thereby suggest the probable success of a thousand actions, restored the property, and paid the costs of the suit to the attorney of Mr. Hevey.

It may perhaps strike you, my Lord, said Mr. Curran, as if I was stating what was not relevant to the action. It is materially pertinent; I am stating a system of concerted vengeance and oppression. These two men acted in concert; they were Archer and Aimwell.* You master at Litchfield, and I at Coventry. You plunderer in the gaol, and I tyrant in the street. And in our respective situations we will co-operate in the common cause of robbery and vengeance. And I state this (said Mr. Curran) because I see Major Sandys in Court: and because I feel I can prove the fact beyond the possibility of denial. If he does not dare to appear, so called upon, as I have called upon him, I prove it by his not daring to appear. If he does venture to come forward, I will prove it by his own oath, or if he ventures to deny a syllable that I have stated, I will prove by irrefragable evidence that his denial was false and perjured. Thus far, Gentlemen (said Mr. Curran), we have traced the Plaintiff through the strange vicissitudes of barbarous im-

* Two characters in the "Beaux Stratagem."

prisonment, of atrocious condemnation, and of accidental deliverance.

[Here Mr. Curran described the feelings of the Plaintiff and of his family upon his restoration; his difficulties on his return; his struggle against the aspersions on his character; his renewed industry; his gradual success; the implacable malignity of Sirr and of Sandys; and the immediate cause of the present action.]

Three years (said Mr. Curran) had elapsed since the deliverance of my client; the public atmosphere had cleared—the private destiny of Hevey seemed to have brightened—but the malice of his enemies had not been appeased. On the 8th of September last, Mr. Hevey was sitting in a public coffee-house; Major Sirr was there. Mr. Hevey was informed that the Major had at that moment said, that he (Hevey) ought to have been hanged. The Plaintiff was fired at the charge; he fixed his eye on Sirr, and asked, if he had dared to say so? Sirr declared that he had, and had said truly. Hevey answered that he was a slanderous scoundrel. At the instant, Sirr rushed upon him, and, assisted by three or four of his satellites, who had attended him in disguise, secured him, and sent him to the Castle guard, desiring that a receipt might be given for the villain. He was sent thither. The officer of the guard chanced to be an Englishman, but lately arrived in Ireland; he said to the bailiffs, if this was in England, I should think this gentleman entitled to bail, but I don't know the laws of this country. However, you had better loosen those irons on his wrists, or I think they may kill him.

Major Sirr, the Defendant, soon arrived, went into his office, and returned with an order which he had written, and by virtue of which Mr. Hevey was conveyed to the custody of his old friend and goaler, Major Sandys. Here he was flung into a room of about thirteen feet by twelve—it was called the hospital of the Provost. It was occupied by six beds, in which were to lie fourteen or fifteen miserable wretches, some of them sinking under contagious diseases. On his first entrance, the light that was admitted by the opening of the door, disclosed to him a view of the sad fellow-sufferers, for whose loathsome society he was once more to exchange the cheerful haunts of men, the use of open air, and of his own limbs; and where he was condemned to expiate the disloyal hatred and contempt which he had dared to show to the overweening and felonious arrogance of slaves in office, and minions in authority; here he passed the first night, without bed or food.

The next morning his humane keeper, the Major, appeared. The Plaintiff demanded, "why he was so imprisoned;" complained of hunger; and asked for the gaol allowance. Major Sandys replied with a torrent of abuse, which he concluded by saying,—“Your crime is your insolence to Major Sirr; however, he disdains to trample upon you—you may appease him by proper and contrite submission; but unless you do so, you shall rot where you are. I tell you this, that if Government will not protect us, by God we will not protect them. You will probably (for I know your insolent and ungrateful hardness) attempt to get out by an Habeas Corpus; but in that you will find yourself mistaken, as such a rascal deserves.”

Hevey was insolent enough to issue an Habeas Corpus, and a return was made upon it—"that Hevey was in custody under a warrant from Gen. Craig, on a charge of treason." That this return was a gross falsehood, fabricated by Sirr, I am instructed to assert. Let him prove the truth of it, if he can. The Judge before whom this return was brought, felt that he had no authority to liberate the unhappy prisoner; and thus, by a most inhuman and malicious lie, my client was again remanded to the horrid mansion of pestilence and famine. Mr. Curran proceeded to describe the feelings of Mr. Hevey—the despair of his friends—the ruin of his affairs—the insolence of Sandys—his offer to set him at large, on condition of making an abject submission to Sirr—the indignant rejection of Hevey—the supplication of his father and sister, rather to submit to any enemy, however base and odious, than perish in such a situation; the repugnance of Hevey—the repetition of kind remonstrances: and the final submission of Hevey to their entreaties;—his signing a submission, dictated by Sandys; and his enlargement from confinement. Thus (said Mr. Curran) was he kicked from his gaol into the common mass of his fellow slaves, by yielding to the tender entreaties of the kindred that loved him, to sign, what was in fact, a release of his claim to the common rights of a human creature, by humbling himself to the brutal arrogance of a pampered slave. But he did suffer the dignity of his nature to be subdued by its kindness; he has been enlarged, and he has brought the present action.

As to the facts that he had stated, Mr. Curran said, he would make a few observations:—It might be said for the Defendant, that much of what was stated may not appear in proof. To that, he answered, that he would not have so

stated, if he had not seen Major Sandys in Court; he had therefore put the facts against him in a way which he thought the most likely to rouse him to a defence of his own character, if he dared to be examined as a witness. He had, he trusted, made him feel, that he had no way of escaping universal detestation, but by denying those charges, if false; and if they were not denied, being thus publicly asserted, his entire case was admitted—his original oppression in the Provost was admitted—his robbery of the cup was admitted—his robbery of the mare was admitted—the lie so audaciously forged on the Habeas Corpus was admitted—the extortion of the infamous apology was admitted. Again, said Mr. Curran, I challenge this worthy compeer of a worthy compeer to make his election between proving his guilt by his own corporal oath, or by the more credible modesty of his silence.

I have now, said Mr. Curran, given you a mere sketch of this extraordinary history. No country, governed by any settled laws, or treated with common humanity, could furnish any occurrences of such unparalleled atrocity; and if the author of *Caleb Williams*,* or of the *Simple Story*,† were to read the tale of this man's sufferings, it might, I think, humble the vanity of their talents (if they are not too proud to be vain), when they saw how a much more fruitful source of incident could be found in the infernal workings of the heart of a malignant slave, than in the richest copiousness of the most fertile and creative imagination. But it is the destiny of Ireland to be the scene of such horrors, and to be stung by such reptiles to madness and to death.

And now (said Mr. Curran) I feel a sort of melancholy pleasure, in getting nearly rid of this odious and nauseous subject. It remains to me only to make a few observations as to the damages you ought to give, if you believe the case of the Plaintiff to be as I have stated. I told you before, that neither pride nor spirit belong to our situation; I should be sorry to influence you into any apish affectation of the port or stature of freedom or independence. But my advice to you, is to give the full amount of the damages laid in the declaration; and I'll tell you why I give you that advice: I think no damages could be excessive, either as a compensation for the injury of the Plaintiff, or as a punishment of the savage barbarity of the Defendant; but my reasons for giving you this advice, lie much deeper than such considerations; they

* Mr. Godwin.

† Mrs. Inchbald.

spring from a view of our present most forlorn and disastrous situation. You are now in the hands of another country; that country has no means of knowing your real condition, except by information that she may accidentally derive from transactions of a public nature. No printer would dare to publish the thousand instances of atrocity which we have witnessed as hideous as the present, nor any one of them, unless he did it in some sort of confidence, that he could scarcely be made a public sacrifice by brutal force, for publishing what was openly proved in a Court of Justice.

Mr. Curran here made some pointed observations on the state of a country where the freedom of the press is extinguished, and where another nation, by whose indolent mercy or whose instigated fury it may be spared or sacrificed, can know nothing of the extent of its sufferings, or its delinquency, but by casual hearsay.

I know (said Mr. Curran) that those philosophers have been abused, who think that men are born in a state of war. I confess I go further, and firmly think they cannot be reclaimed to a state of peace. When I see the conduct of man to man, I believe it. When I see the list of offences in every criminal code in Europe—when I compare the enormity of their crimes with the still greater enormity of their punishments, I retain no doubt upon the subject. But if I could hesitate as to men in the same community, I have no doubt of the inextinguishable malignity that will for ever inflame nation against nation. Well was it said, that a “nation has no heart.” Towards each other, nations are uniformly envious, vindictive, oppressive, and unjust. What did Spain feel for the murders or the robberies of the West?—nothing. And yet, at that time, she prided herself as much as England ever did on the elevation of her sentiment, and the refinement of her morality. Yet what an odious spectacle did she exhibit!—her bosom burning with all the fury of rapine and tyranny; her mouth full of the pious praises of the living God, and her hands red with the blood of his innocent and devoted creatures. When I advise you, therefore, to mark your feelings of the case before you, do not think I mean that you could make any general impression on the morality or tenderness of the country whose property we are become. I am not so foolish as to hope any such effect: practical justice and humanity are virtues that require laborious acts, and mortifying privations;—expect not therefore to find them; appeal not to

them. But there are principles and feelings substituted in their place, a stupid preference and admiration of self, an affectation of humanity, and a fondness for unmerited praise; these you may find, for they cost nothing; and upon them you may produce some effect. When outrages of this kind are held up to the world, as done under the sanction of their authority, they must become odious to mankind, unless they let fall some reprobation on the immediate instruments and abettors of such deeds. An Irish Lord-Lieutenant will shrink from the imputation of countenancing them. Great Britain will see that it cannot be her interest to encourage such an infernal spirit of subaltern barbarity, that reduces man to a condition lower than that of the beast of the field. They will be ashamed of employing such instruments as the present Defendant. When the government of Ireland lately gave up the celebrated O'Brien* to the hands of the executioner, I have no little reason to believe that they suffered as they deserved on the occasion. I have no doubt but that your verdict of this day, if you act as you ought to do, will produce a similar effect. And as to England, I cannot too often inculcate upon you, that she knows nothing of our situation. When *torture* was the daily and ordinary system of the executive government, it was denied in London, with a profligacy of effrontery, equal to the barbarity with which it was exhibited in Dublin; and, if the facts that shall appear to-day should be stated on the other side of the water, I make no doubt that very near one hundred worthy persons would be ready to deny their existence upon their honour, or, if necessary, upon their oaths.

I cannot also but observe to you, continued Mr. Curran, that the real state of one country is more forcibly impressed on the attention of another, by a verdict on such a subject as this, than it could be by any general description. When you endeavour to convey an idea of a great number of barbarians, practising a great variety of cruelties upon an incalculable multitude of sufferers, nothing defined or specific finds its way to the heart; nor is any sentiment excited, save that of a general erratic unappropriated commiseration. If, for instance, you wished to convey to the mind of an English matron the horrors of that direful period, when, in defiance of the remonstrance of the ever-to-be-lamented Abercromby, our poor people were surrendered to the licen-

* A perjured Spy and Informer.

tious brutality of the soldiery, by the authority of the state; you would vainly endeavour to give her a general picture of lust, and rapine, and murder, and conflagration. By endeavouring to comprehend every thing, you would convey nothing. When the father of poetry * wishes to pourtray the movements of contending armies, and an embattled field, he exemplifies only, he does not describe; he does not venture to describe the perplexed and promiscuous conflicts of adverse hosts, but by the acts and fates of a few individuals he conveys a notion of the vicissitudes of the fight, and the fortunes of the day. So should your story to her keep clear of generalities: instead of exhibiting the picture of an entire province, select a single object; and even in that single object do not release the imagination of your hearer from its task, by giving more than an outline. Take a cottage; place the affrighted mother of her orphan daughter at the door, the paleness of death upon her face, and more than its agonies in her heart; her aching eye, her anxious ear, struggle through the mist of closing day, to catch the approaches of desolation and dishonour. The ruffian gang arrives—the feast of plunder begins—the cup of madness kindles in its circulation. The wandering glances of the ravisher become concentrated upon the shrinking and devoted victim.—You need not dilate, you need not expatiate; the unpoluted mother, to whom you tell the story of horror, beseeches you not to proceed; she presses her child to her heart—she drowns it in her tears—her fancy catches more than an angel's tongue could describe; at a single view she takes in the whole miserable succession of force, of profanation, of despair, of death. So it is in the question before us. If any man shall hear of this day's transaction, he cannot be so foolish as to suppose that we have been confined to a single character, like those now brought before you. No, Gentlemen; far from it: he will have too much common sense not to know that outrages like this are never solitary; that where the public calamity generates imps like those, their number is as the sands of the sea, and their fury as insatiable as its waves. I am therefore anxious that our *masters* should have one authenticated example of the treatment which our unhappy country suffers under the sanction of their authority; it will put a strong question to their humanity, if they have any—to their prudence, if their pride will let them listen to it; or, at least, to that anxiety for re-

* Homer.

putation, to that pretension to the imaginary virtues of mildness and mercy, which even those countries the most divested of them are so ready to assert their claim to, and so credulously disposed to believe that claim allowed.

There are some considerations respecting yourselves and the Defendant, to which I should wish to say a word. You may perhaps think your persons unsafe, if you find a verdict against so considerable a person. I know his power, as well as you do—I know he might send you to the Provost, as he has done the Plaintiff, and forge a return on any writ you might issue for your deliverance—I know there is no spot on the devoted nation (except that on which we now are), where the story of oppression can be told or heard; but I think you can have no well-founded apprehensions. There is a time when cruelty and oppression become satiated and fatigued; in that satiety at least you will find yourselves secure. But there is still a better security for you—the gratitude of the worthy Defendant. If any thing could add to his honours and his credit, and his claims, it would be your verdict for the Plaintiff; for in what instance have you ever seen any man so effectually accredited and recommended, as by the public execration?—what a man, for instance, might not O'Brien have been, if the envy of the gibbet had not arrested the career of his honours and preferments? In every point of view, therefore, I recommend to you to find, and to find liberally, for the Plaintiff. I have founded my advice upon the real circumstances of your situation; I have not endeavoured to stimulate you into any silly hectic of fancied Liberty. I do not call upon you to expose yourselves by the affectation of vindicating the cause of freedom, and humanity; much less do I wish to exhibit ourselves to those, whose property we are, as indignant or contumacious under their authority. Far from it; they are unquestionably the proprietors of us; they are entitled of right to drive us, and to work us; but we may be permitted modestly to suggest, that, for their own sakes, and for their own interest, a line of moderation may be drawn—that there are excesses of infliction, that human nature cannot bear. With respect to her western negroes, Great Britain has had the wisdom and humanity to feel the justice of this observation, and in some degree to act upon it; and I have too high an opinion of that great and philosophic nation, not to hope that she might think us not undeserving of equal mildness—provided it did not interfere with her just authority over us. It would, I should

even think, be for her credit, that having the honour of so illustrious a rider, we should be kept in some sort of condition, somewhat bordering upon spirit, which cannot be maintained, if she suffers us to be utterly broken down by the malicious wantonness of her grooms and jockeys.

Mr. Curran concluded by saying, that the cause was of no inconsiderable expectation; and that in whatever light the Jury regarded it, whether with respect to the two countries, or to Ireland singly, or to the parties concerned, or to their own sense of character and public duty, or to the natural consequences that must flow from the event, they ought to consider it with the most profound attention, before they agreed upon their verdict.

VERDICT FOR THE PLAINTIFF.

Damages One Hundred and Fifty Pounds,

SPEECH

AT ENNIS ASSIZES, COUNTY OF CLARE, JULY 27, 1804.

THE REV. CHARLES MASSY, PLAINTIFF;
AND
THE MARQUIS OF HEADFORT, DEFENDANT.

Criminal Conversation.

FOR THE PLAINTIFF.

MR. CURRAN in reply said:—

Never so clearly as in the present instance have I observed that safeguard of justice, which providence hath placed in the nature of man. Such is the imperious dominion with which truth and reason wave their sceptre over the human intellect, that no solicitations, however artful, no talent, however commanding, can reduce it from its allegiance. In proportion to the humility of our submission to its rule, do we rise into some faint emulation of that ineffable and presiding divinity, whose characteristic attribute it is—

to be coerced and bound by the inexorable laws of its own nature, so as to be *all-wise* and *all-just* from necessity, rather than election. You have seen it in the learned advocate who has preceded me, most peculiarly and strikingly illustrated—you have seen even his great talents, perhaps the first in any country, languishing under a cause too weak to *carry* him, and too heavy to be *carried* by him. He was forced to dismiss his natural candour and sincerity, and, having no merits in his case, to substitute the dignity of his own manner, the resources of his own ingenuity, over the overwhelming difficulties with which he was surrounded. Wretched client! unhappy advocate! what a combination do you form! But such is the condition of guilt—its commission mean and tremulous—its defence artificial and insincere—its prosecution candid and simple—its condemnation dignified and austere. Such has been the Defendant's guilt—such his defence—such shall be my address—and such, I trust, your verdict. The learned Counsel has told you, that this unfortunate woman is not to be estimated at forty thousand pounds*—fatal and unquestionable is the truth of this assertion. Alas! Gentlemen, she is no longer worth any thing—faded, fallen, degraded, and disgraced, she is worth less than nothing! But it is for the honour, the hope, the expectation, the tenderness, and the comforts, that have been blasted by the Defendant, and have fled for ever, that you are to remunerate the Plaintiff, by the punishment of the Defendant. It is not her present value which you are to weigh—but it is her value at that time, when she sat basking in a husband's love, with the blessing of heaven on her head, and its purity in her heart; when she sat amongst her family, and administered the morality of the parental board:—estimate that past value—compare it with its present deplorable diminution—and it may lead you to form some judgment of the severity of the injury, and the requisite extent of the compensation.

The learned Counsel has told you, you ought to be cautious, because your verdict cannot be set aside for excess. The assertion is just; but has he treated you fairly by its application? His cause would not allow him to be fair—for, why is the rule adopted in this single action? Because, this being peculiarly an injury to the most susceptible of all human feelings—it leaves the injury of the husband to be ascertained by the sensibility of the Jury, and does not

* The damages were laid at that amount.

presume to measure the justice of their determination by the cold and chilly exercise of his own discretion. In any other action it is easy to calculate. If a tradesman's arm is cut off, you can measure the loss which he has sustained—but the wound of feeling, and the agony of the heart, cannot be judged by any standard with which I am acquainted. And you are unfairly dealt with, when you are called on to appreciate the present suffering of the husband, by the present guilt, delinquency, and degradation of his wife. As well might you, if called on to give compensation to a man for the murder of his dearest friend—find the measure of his injury, by weighing the ashes of the dead. But it is not, Gentlemen of the Jury, by weighing the ashes of the dead, that you would estimate the loss of the survivor.

The learned Counsel has referred you to other cases, and other countries, for instances of moderate verdicts. I can refer you to some authentic instances of just ones. In the next country, £15,000. against a subaltern officer. In Travers and M'Carthy, £5,000. against a servant. In Tighe against Jones. £10,000. against a man not worth a shilling. What then ought to be the rule, where rank, and power, and wealth, and station, have combined to render the example of his crime more dangerous—to make his guilt more odious—to make the injury to the Plaintiff more grievous, because more conspicuous? I affect no levelling familiarity, when I speak of persons in the higher ranks of society—distinctions of orders are necessary, and I always feel disposed to treat them with respect—but when it is my duty to speak of the crimes by which they are degraded, I am not so fastidious as to shrink from their contact, when to touch them is essential to their dissection. In this action, the condition, the conduct, and circumstances of the party, are justly and peculiarly the objects of your consideration. Who are the parties? The Plaintiff, young, amiable, of family and education. Of the generous disinterestedness of his heart you can form an opinion even from the evidence of the Defendant, that he declined an alliance, which would have added to his fortune and consideration, and which he rejected for an unportioned union with his present wife. She, too, at that time young, beautiful, and accomplished; and feeling her affection for her husband increase, in proportion as she remembered the ardour of his love, and the sincerity of his sacrifice. Look now to the Defendant!—I blush to name him! I blush to name a rank which he has tarnished—and a patent that he

has worse than cancelled. High in the army—high in the state—the hereditary Councillor of the King—of wealth incalculable:—and to this last I advert with an indignant and contemptuous satisfaction, because, as the only instrument of his guilt and shame, it will be the means of his punishment, and the source of compensation for his guilt.

But let me call your attention, distinctly, to the questions you have to consider. The first is the fact of guilt. Is this noble Lord guilty? His Counsel knew too well how they would have mortified his vanity, had they given the smallest reason to doubt the splendour of his achievement. Against any such humiliating suspicion he had taken the most studious precaution by the publicity of the exploit. And here, in this Court, and before you, and in the face of the country, has he the unparalleled effrontery of disdaining to resort even to a *confession of innocence*.—His guilt established, your next question is, the damages you should give. You have been told, that the amount of the damages should depend on circumstances. You will consider these circumstances, whether of aggravation or mitigation. His learned Counsel contend, that the Plaintiff has been the author of his own suffering, and ought to receive no compensation for the ill consequences of his own conduct. In what part of the evidence do you find any foundation for that assertion? He indulged her, it seems, in dress—generous and attached, he probably indulged her in that point beyond his means; and the Defendant now impudently calls on you to find an excuse for the adulterer in the fondness and liberality of the husband. But you have been told, that the husband connived. Odious and impudent aggravation of injury—to add calumny to insult, and outrage to dishonour. From whom but a man hackneyed in the paths of shame and vice—from whom, but from a man having no compunctions in his own breast to restrain him, could you expect such brutal disregard for the feelings of others—from whom, but the cold-blooded veteran seducer—from what, but from the exhausted mind—the habitual community with shame—from what, but the habitual contempt of virtue and of man, could you have expected the arrogance, the barbarity, and folly of so foul, because so false an imputation? He should have reflected---and have blushed---before he suffered so vile a topic of defence to have passed his lips. But ere you condemn, let him have the benefit of the excuse, if the excuse be true. You must have observed how his Counsel fluttered and vibrated—be-

tween what they called connivance and injudicious confidence; and how, in affecting to distinguish, they have confounded them both together. If the Plaintiff has connived, I freely say to you, do not reward the wretch who has prostituted his wife, and surrendered his own honour—do not compensate the pander of his own shame, and the willing instrument of his own infamy. But as there is no sum so low to which such a defence, if true, ought not to reduce your verdict, so neither is any so high to which such a charge ought not to inflame it, if such a charge be false. Where is the single fact in this case on which the remotest suspicion of connivance can be hung?—Odiously has the Defendant endeavoured to make the softest and most amiable feelings of the heart the pretext of his slanderous imputations. An ancient and respectable Prelate, the husband of his wife's sister, chained down to the bed of sickness, perhaps to the bed of death;—in that distressing situation, my Client suffered that wife to be the bearer of consolation to the bosom of her sister—he had not the heart to refuse her—and the softness of his nature is now charged on him as a crime. He is now insolently told, that he connived at his dishonour, and that he ought to have foreseen, that the mansion of sickness and of sorrow would have been made the scene of assignation and of guilt. On this charge of connivance I will not farther weary you or exhaust myself—I will add nothing more, than that it is as false as it is impudent—that in the evidence it has not a colour of support; and that by your verdict you should mark it with reprobation. The other subject, namely, that he was indiscreet in his confidence, does, I think, call for some discussion—for I trust you see that I affect not any address to your passions, by which you may be led away from the subject—I presume merely to separate the parts of this affecting case, and to lay them item by item before you, with the coldness of detail, and not with any colouring or display of fiction or of fancy. Honourable to himself was his unsuspecting confidence, but fatal must we admit it to have been, when we look to the abuse committed upon it. But where was the guilt of this indiscretion? He did admit this noble Lord to pass his threshold as his guest. Now the charge which this noble Lord builds on this indiscretion is—“Thou fool! thou hadst confidence in my honour—and that was a guilty indiscretion: thou simpleton, thou thoughtest that an admitted and cherished guest would have respected the laws of honour and hospitality—and thy indiscretion was

guilt: thou thoughtest that he would have shrunk from the meanness and barbarity of requiting kindness with treachery—and thy indiscretion was guilt.”

Gentlemen, what horrid alternative in the treatment of wives would such reasoning recommend? Are they to be immured by worse than eastern barbarity? Are their principles to be depraved, their passions sublimated, every finer motive of action extinguished by the inevitable consequences of thus treating them like slaves? Or is a liberal and generous confidence in them to be the passport of the adulterer, and the justification of his crimes?

Honourably, but fatally for his own repose, he was neither jealous, suspicious, nor cruel.—He treated the defendant with the confidence of a friend—and his wife with the tenderness of a husband.—He did leave to the noble Marquis the physical possibility of committing against him the greatest crime which can be perpetrated against a being of an amiable heart and refined education.—In the middle of the day, at the moment of divine worship, when the miserable husband was on his knees, directing the prayers and thanksgiving of his congregation to their God—that moment did the remorseless adulterer choose to carry off the deluded victim from her husband—from her child—from her character—from her happiness,—as if not content to leave his crime confined to its miserable aggravations, unless he gave it a cast and colour of factitious sacrilege and impiety. Oh! how happy had it been when he arrived at the bank of the river with the ill-fated fugitive, ere yet he had committed her to that boat, of which, like the fabled bark of Styx, the exile was eternal, how happy at that moment, so teeming with misery and with shame, if you, my Lord, had met him, and could have accosted him in the character of that good genius which had abandoned him. How impressively might you have pleaded the cause of the father, of the child, of the mother, and even of the worthless Defendant himself. You would have said :—“ Is this the requital that you are about to make for respect and kindness, and confidence in your honour? Can you deliberately expose this young man in the bloom of life, with all his hopes before him? Can you expose him, a wretched outcast from society, to the scorn of a merciless world? Can you set him adrift upon the tempestuous ocean of his own passions, at this early season, when they are most headstrong; and can you cut him out from the moorings of those domestic obligations by whose cable he might ride at safety from their turbulence? Think of, if

you can conceive it, what a powerful influence arises from the sense of home, from the sacred religion of the hearth in quelling the passions, in reclaiming the wanderings, in correcting the discords of the human heart; do not cruelly take from him the protection of these attachments. But if you have no pity for the father, have mercy at least upon his innocent and helpless child; do not condemn him to an education scandalous or neglected;—do not strike him into that most dreadful of all human conditions, the orphanage that springs not from the grave, that falls not from the hand of Providence, or the stroke of death, but comes before its time, anticipated and inflicted by the remorseless cruelty of parental guilt. For the poor victim herself—not yet immolated—while yet balancing upon the pivot of her destiny, your heart could not be cold, nor your tongue be wordless. You would have said to him:—“Pause, my Lord, while there is yet a moment for reflection. What are your motives, what your views, what your prospects, from what you are about to do? You are a married man, the husband of the most amiable and respectable of women; you cannot look to the chance of marrying this wretched fugitive: between you and such an event there are two sepulchres to pass. What are your inducements? Is it love, think you? No,—do not give that name to any attraction you can find in the faded refuse of a violated bed. Love is a noble and generous passion; it can be founded only on a pure and ardent friendship, on an exalted respect, on an implicit confidence in its object. Search your heart, examine your judgment, do you find the semblance of any one of these sentiments to bind you to her? What could degrade a mind to which nature or education had given port, or stature, or character, into a friendship for her? Could you repose upon her faith? Look in her face, my Lord; she is at this moment giving you the violation of the most sacred of human obligations as the pledge of her fidelity. She is giving you the most irrefragable proof that, as she is deserting her husband for you, so she would without a scruple abandon you for another. Do you anticipate any pleasure you might feel in the possible event of your becoming the parents of a common child? She is at this moment proving to you that she is as dead to the sense of parental as of conjugal obligation; and that she would abandon your offspring to-morrow, with the same facility with which she now deserts her own. Look then at her conduct, as it is, as the world must behold it, blackened by every aggravation that can make it either odious or con-

temptible, and unrelieved by a single circumstance of mitigation, that could palliate its guilt, or retrieve it from abhorrence.

Mean, however, and degraded as this woman must be, she will still (if you take her with you), have strong and heavy claims upon you. The force of such claims does certainly depend upon circumstances; before, therefore, you expose her fate to the dreadful risk of your caprice or ingratitude, in mercy to her, weigh well the confidence she can place in your future justice and honour: at that future time, much nearer than you think, by what topics can her cause be pleaded to a sated appetite, to a heart that repels her, to a just judgment in which she never could have been valued or respected? Here is not the case of an unmarried woman, with whom a pure and generous friendship may insensibly have ripened into a more serious attachment, until at last her heart became too deeply pledged to be re-assumed: if so circumstanced, without any husband to betray, or child to desert, or motive to restrain, except what related solely to herself, her anxiety for your happiness made her overlook every other consideration, and commit her history to your honour; in such a case, the strongest and the highest that imagination can suppose, in which you at least could see nothing but the most noble and disinterested sacrifice; in which you could find nothing but what claimed from you the most kind and exalted sentiment of tenderness and devotion, and respect; and in which the most fastidious rigour would find so much more subject for sympathy than blame;—let me ask you, could you even in that case, answer for your own justice and gratitude? I do not allude to the long and pitiful catalogue of paltry adventures, in which it seems your time has been employed—the coarse and vulgar succession of casual connexions, joyless, loveless, and unendeared: but do you not find upon your memory some trace of an engagement of the character I have sketched?—Has not your sense of what you would owe in such a case, and to such a woman, been at least once put to the test of experiment? Has it not once at least happened that such a woman, with all the resolution of strong faith, flung her youth, her hope, her beauty, her talent, upon your bosom, weighed you against the world, which she found but a feather in the scale, and took you as an equivalent? How did you then acquit yourself? Did you prove yourself worthy of the sacred trust reposed in you? Did your spirit so associate with hers, as to leave her no room to regret the

splendid and disinterested sacrifice she had made? Did her soul find a pillow in the tenderness of yours, and support in its firmness? Did you preserve her high in your own consciousness, proud in your admiration and friendship, and happy in your affection? You might have so acted; and the man that was worthy of her would have perished rather than not so act, as to make her delighted with having confided so sacred a trust to his honour—Did you so act? Did she feel that, however precious to your heart, she was still more exalted and honourable in your reverence and respect? Or did she find you coarse and paltry, fluttering and unpurposed, unfeeling, and ungrateful? You found her a fair and blushing flower, its beauty and its fragrance bathed in the dews of heaven. Did you so tenderly transplant it, as to preserve that beauty and fragrance unimpaired? Or did you so rudely cut it, as to interrupt its nutriment, to waste its sweetness, to blast its beauty, to bow down its faded and sickly head? And did you at last fling it like ‘a loathsome weed away?’* If then to such a woman, so clothed with every title that could ennoble, and exalt, and endear her to the heart of man, you would be cruelly and capriciously deficient, how can a wretched fugitive like this, in every point her contrast, hope to find you just? Send her then away. Send her back to her home, to her child, to her husband, to herself.” Alas, there was no one to hold such language to this noble Defendant; he did not hold it to himself. But he paraded his despicable prize in his own carriage, with his own retinue, his own servants—this veteran Paris hawked his enamoured Helen from this western quarter of the island to a sea-port in the eastern, crowned with the acclamations of a senseless and grinning rabble, glorying and delighted, no doubt, in the leering and scoffing admiration of grooms, and ostlers, and waiters, as he passed.

In this odious contempt of every personal feeling, of public opinion, of common humanity, did he parade this woman to the sea-port, whence he transported his precious cargo to a country, where her example may be less mischievous than in her own; where I agree with my learned colleague in heartily wishing he may remain with her for ever. We are too poor, too simple, too unadvanced a country, for the ex-

* ——— “ Long she flourished,
Grew sweet to sense, and lovely to the eye;
Until at length the cruel spoiler came,
Pluck’d this fair flower, and rifled all its sweetness;
Then flung it like a loathsome weed away.” OTWAY.

ample of such achievements. When the relaxation of morals is the natural growth and consequence of the great progress of arts and wealth, it is accompanied by a refinement that makes it less gross than shocking; but for such palliations we are at least a century too young. I advise you, therefore, most earnestly to rebuke this budding mischief, by letting the wholesome vigour and chastisement of a liberal verdict speak what you think of its enormity. In every point of view in which I can look at the subject, I see you are called upon to give a verdict of bold, and just, and indignant, and exemplary compensation. The injury of the Plaintiff demands it from your justice; the delinquency of the Defendant provokes it by its enormity. The rank on which he has relied for impunity calls upon you to tell him, that crime does not ascend to the rank of the perpetrator, but the perpetrator sinks from his rank, and descends to the level of his delinquency. The style and mode of his defence is a gross aggravation of his conduct, and a gross insult upon you. Look upon the different subjects of his defence as you ought, and let him profit by them as he deserves; vainly presumptuous upon his rank, he wishes to overawe you by the despicable consideration. He next resorts to a cruel aspersion upon the character of the unhappy Plaintiff, whom he had already wounded beyond the possibility of reparation; he has ventured to charge him with connivance: as to that, I will only say, Gentlemen of the Jury, do not give this vain boaster a pretext for saying, that if her husband connived in the offence, the Jury also connived in the reparation.

But he has pressed another curious topic upon you. After the Plaintiff had cause to suspect his designs, and the likelihood of their being fatally successful, he did not then act precisely as he ought. Gracious God, what an argument for him to dare to advance! It is saying this to him: "I abused your confidence, your hospitality; I laid a base plan for the seduction of the wife of your bosom; I succeeded at last, so as to throw in upon you that most dreadful of all suspicions to a man fondly attached, proud of his wife's honour, and tremblingly alive to his own; that you were possibly a dupe to the confidence in the wife, as much as in the guest: in this so pitiable distress, which I myself had studiously and deliberately contrived for you, between hope and fear, and doubt and love, and jealousy and shame; one moment shrinking from the cruelty of your suspicion; the next, fired with indignation at the

facility and credulity of your acquittal; in this labyrinth of doubt, in this frenzy of suffering, you were not collected and composed; you did not act as you might have done, if I had not worked you to madness; and upon that very madness which I have inflicted upon you, upon the very completion of my guilt, and of your misery, I will build my defence. You will not act critically right, and therefore are unworthy of compensation." Gentlemen, can you be dead to the remorseless atrocity of such a defence! And shall not your honest verdict mark it as it deserves? But let me go a little further; let me ask you, for I confess I have no distinct idea, what should be the conduct of a husband so placed, and who is to act critically right? Shall he lock her up, or turn her out, or enlarge or abridge her liberty of acting as she pleases? Oh, dreadful Areopagus of the tea-table! how formidable thy inquests, how tremendous thy condemnations! In the first case he is brutal and barbarous, an odious eastern despot. In the next; what! turn an innocent woman out of his house, without evidence or proof, but merely because he is vile and mean enough to suspect the wife of his bosom, and the mother of his child! Between these extremes, what intermediate degree is he to adopt? I put this question to you at this moment—uninfluenced by any passion as you now are, but cool and collected, and uninterested as you must be, do you see clearly this proper and exact line, which the Plaintiff should have pursued? I much question if you do. But if you did or could, must you not say, that he was the last man from whom you should expect the coolness to discover, or the steadiness to pursue it? And yet this is the outrageous and insolent defence that is put forward to you. My miserable client, when his brain was on fire, and every fiend of hell was let loose upon his heart, should then, it seems, have placed himself before his mirror; he should have taught the stream of agony to flow decorously down his forehead; he should have composed his features to harmony; he should have writhed with grace, and groaned in melody.

But look farther to this noble Defendant, and his honourable defence. The wretched woman is to be successively the victim of seduction, and of slander. She, it seems, received marked attentions.—Here, I confess I felt myself not a little at a loss. The witnesses could not describe what these marked attentions were, or are. They consisted, not, if you believe the witness that swore to them, in any per-

sonal approach, or contact whatsoever—nor in any unwarrantable topics of discourse. Of what materials, then, were they composed? Why, it seems a gentleman had the insolence at table to propose to her a glass of wine; and she, oh, most abandoned lady! instead of flying like an angry parrot at his head, and besmirching and bescratching him for his insolence, tamely and basely replies, ‘Port, sir, if you please.’ But, Gentlemen, why do I advert to this folly, this nonsense? Not surely to vindicate from censure the most innocent and the most delightful intercourse of social kindness, or harmless and cheerful courtesy—“where virtue is, there are the most virtuous.” But I am soliciting your attention, and your feeling, to the mean and odious aggravation—to the unblushing and remorseless barbarity, of falsely aspersing the wretched woman he had undone. One good he has done—he has disclosed to you the point in which he can feel; for how imperious must that avarice be, which could resort to so vile an expedient of frugality? Yes, I will say, that, with the common feelings of a man, he would have rather suffered his thirty thousand a year to go as compensation to the Plaintiff, than have saved a shilling of it by so vile an expedient of economy. He would rather have starved with her in a gaol—he would rather have sunk with her into the ocean, than have so vilified her, than have so degraded himself. But it seems, Gentlemen, and indeed you have been told, that long as the course of his gallantries has been—and he has grown grey in the service—it is the first time he has been called upon for damages. To how many might it have been fortunate, if he had not that impunity to boast? Your verdict will, I trust, put an end to that encouragement to guilt, that is built upon impunity—the devil, it seems, has saved the noble Marquis harmless in the past; but your verdict will tell him the term of that indemnity is expired—that his old friend and banker has no more effects in his hands—and that if he draws any more upon him, he must pay his own bills himself. You will do much good by doing so: you may not enlighten his conscience, nor touch his heart; but his frugality will understand the hint. It will adopt the prudence of age, and deter him from pursuits, in which, though he may be insensible of shame, he will not be regardless of expense. You will do more—you will not only punish him in his tender point; but you will weaken him in his strong one—his money. We have heard much of this noble Lord’s wealth, and much of his exploits; but not much of his accomplishments or his

wit—I know not that his verses have soared even to the poet's corner. I have heard it said, that an ass laden with gold could find his way through the gate of the strongest city. But, Gentlemen, lighten the load upon his back, and you will completely curtail the mischievous faculty of a grave animal whose momentum lies, not in his agility, but his weight—not in the quantity of motion, but the quantity of his matter.

There is another ground on which you are called upon to give most liberal damages, and that has been laid by the unfeeling vanity of the Defendant. This business has been marked by the most elaborate publicity. It is very clear that he has been allured by the glory of the chace, and not the value of the game. The poor object of his pursuit could be of no value to him, or he could not have so wantonly, and cruelly, and unnecessarily abused her. He might easily have kept this unhappy intercourse an unsuspected secret. Even if he wished for elopement, he might easily have so contrived it, that the place of her retreat would be profoundly undiscoverable; yet, though even the expense—a point so tender to his delicate sensibility—of concealing, could not be one fortieth of the cost of publishing her, his vanity decided him in favour of glory and publicity. By that election he has in fact put forward the Irish nation, and its character, so often and so variously calumniated, upon its trial before the tribunal of the empire; and your verdict will this day decide whether an Irish Jury can feel with justice and spirit upon a subject that involves conjugal affection and comfort—domestic honour and repose—the certainty of issue—the weight of public opinion—the gilded and presumptuous criminality of overweening rank and station. I doubt not but he is at this moment reclined on a silken sofa, anticipating that submissive and modest verdict, by which you will lean gently on his errors; and expecting from your patriotism, no doubt, that you will think again, and again, before you condemn any great portion of the immense revenue of a great absentee, to be detained in the nation that produced it, instead of being transmitted, as it ought, to be expended in the splendour of another country. He is now probably waiting for the arrival of the report of this day, which I understand a famous note-taker has been sent hither to collect. (Let not the gentleman be disturbed.) Gentlemen, let me assure you, it is more, much more the trial of you, than of the noble Marquis, of which this imported recorder is at this moment

collecting the materials. His noble employer is now expecting a report to the following effect: "Such a day came on to be tried at Ennis, by a special Jury, the cause of Charles Massy against the most noble the Marquis of Headfort. It appeared that the Plaintiff's wife was young, beautiful, and captivating—the Plaintiff himself, a person fond of this beautiful creature to distraction, and both doating on their child. But the noble Marquis approached her; the plume of glory nodded on his head. Not the goddess Minerva, but the goddess Venus, had lighted up his casque with "the fire that never tires—such as many a lady gay had been dazzled with before." At the first advance she trembled; at the second she struck to the redoubted son of Mars, and pupil of Venus. The Jury saw it was not his fault (it was an Irish Jury); they felt compassion for the tenderness of the mother's heart, and for the warmth of the lover's passion. The Jury saw on the one side, a young, entertaining gallant; on the other, a beauteous creature, of charms irresistible. They recollected, that Jupiter had been always successful in his amours, although Vulcan had not always escaped some awkward accidents. The Jury was composed of fathers, brothers, husbands—but they had not the vulgar jealousy, that views little things of that sort with rigour; and, wishing to assimilate their country in every respect to England—not that they are united to it—they, like English gentlemen, returned to their box with a verdict of sixpence damages, and sixpence costs." Let this be sent to England. I promise you, your odious secret will not be kept better than that of the wretched Mrs. Massy. There is not a bawdy chronicle in London, in which the epitaph which you would have written on yourselves will not be published; and our enemies will delight in the spectacle of our precocious depravity, in seeing that we can be rotten before we are ripe. I do not suppose it—I do not, cannot, will not believe it; I will not harrow up myself with the anticipated apprehension.

There is another consideration, Gentlemen, which I think most imperiously demands even a vindictive award of exemplary damages—and that is the breach of hospitality. To us peculiarly does it belong to avenge the violation of its altar. The hospitality of other countries is a matter of necessity or convention—in savage nations, of the first; in polished, of the latter: but the hospitality of an *Irishman* is not the running account of posted and ledgered courtesies, as in other countries; it springs like all his qua-

lities, his faults, his virtues—directly from his heart. The heart of an Irishman is by nature bold, and he confides; it is tender, and he loves; it is generous, and he gives; it is social, and he is hospitable. This sacrilegious intruder has profaned the religion of that sacred altar so elevated in our worship, so precious to our devotion; and it is our privilege to avenge the crime. You must either pull down the altar, and abolish the worship; or you must preserve its sanctity undebased. There is no alternative between the universal exclusion of all mankind from your threshold, and the most rigorous punishment of him who is admitted and betrays. This Defendant has been so trusted, has so betrayed, and you ought to make him a most signal example.

Gentlemen, I am the more disposed to feel the strongest indignation and abhorrence at this odious conduct of the Defendant, when I consider the deplorable condition to which he has reduced the Plaintiff, and perhaps the still more deplorable one that the Plaintiff has in prospect before him. What a progress has he to travel through, before he can attain the peace and tranquillity which he has lost? How like the wounds of the body are those of the mind! how burning the fever! how painful the suppuration! how slow, how hesitating, how relapsing the process to convalescence? Through what a variety of suffering, what new scenes and changes must my unhappy client pass, ere he can re-attain, should he ever re-attain, that health of soul of which he has been despoiled by the cold and deliberate machinations of this practised and gilded seducer? If, instead of drawing upon his incalculable wealth for a scanty retribution, you were to stop the progress of his despicable achievements, by reducing him to actual poverty, you could not even so punish him beyond the scope of his offence, nor reprise the Plaintiff beyond the measure of his suffering. Let me remind you, that in this action, the law not only empowers you, but that its policy commands you, to consider the public example, as well as the individual injury, when you adjust the amount of your verdict. I confess I am most anxious that you should acquit yourselves worthily upon this important occasion. I am addressing you as fathers, husbands, brothers. I am anxious that a feeling of those high relations should enter into, and give dignity to your verdict. But I confess, I feel a ten-fold solicitude when I remember that I am addressing you as my countrymen, as Irishmen, whose characters as Jurors, as Gentlemen, must find either honour or degradation in the result of your decision. Small

as must be the distributive share of that national estimation, that can belong to so unimportant an individual as myself, yet I do own I am tremblingly solicitous for his fate. Perhaps it appears of more value to me, because it is embarked on the same bottom with yours; perhaps the community of peril, of common safety, or common wreck, gives a consequence to my share of the risk, which I could not be vain enough to give it, if it were not raised to it by that mutuality. But why stoop to think at all of myself, when I know that you, Gentlemen of the Jury—when I know that our country itself are my clients on this day, and must abide the alternative of honour, or of infamy, as you shall decide. But I will not despond, I will not dare to despond. I have every trust, and hope, and confidence in you. And to that hope I will add my most fervent prayer to the God of all truth and justice, that you may so decide, as to preserve to yourselves while you live, the most delightful of all recollections, that of acting justly; and transmit to your children the most precious of all inheritances, the memory of your virtue.

Verdict for the Plaintiff.

SPEECH

IN DEFENCE OF MR. OLIVER BOND,

ON TUESDAY, JULY 24, 1798.

High Treason.

The Officer of the Court charged the Prisoner as follows :—

“ Mr. OLIVER BOND, you stand indicted, for that not having the fear of God before your eyes, nor the duty of your allegiance considering, but being moved and seduced by the instigation of the devil, you did, with other false traitors, conspire and meet together, and contriving and imagining with all your strength this kingdom to disturb, and to overturn by force of arms, &c. the government of this kingdom, on the 20th day of May, in the thirty-eighth year of the reign of the present King, in the parish of

“ St. Michael the archangel, did conspire and meet together
 “ about the means of overturning the government; and his
 “ Majesty of and from his royal state, power and govern-
 “ ment of this country to deprive and put; and that you,
 “ Oliver Bond, with other false traitors, did meet together,
 “ and make resolutions to procure arms and ammunition, for
 “ the purpose of arming men to wage war against our Sove-
 “ reign Lord the King; and did conspire to overturn by
 “ force the lawful government of this kingdom, and to
 “ change by force the government thereof; and did as-
 “ semble and meet together to raise a rebellion in this
 “ kingdom; to procure arms to aid and assist in said rebel-
 “ lion; and that you, Oliver Bond, did aid and cause Thomas
 “ Reynolds to be a colonel in the county of Kildare, to aid
 “ and assist in the said rebellion, and did administer unlawful
 “ oaths to said Thomas Reynolds, and to certain other per-
 “ sons, to be United Irishmen for the purpose of overturning
 “ by force the government of this kingdom; and that you,
 “ the said Oliver Bond, did collect sums of money to fur-
 “ nish arms and ammunition to the persons in said rebellion,
 “ against the duty of your allegiance, contrary to His Ma-
 “ jesty’s peace, his crown and dignity, and contrary to the
 “ form of the statute in that case made and provided. And
 “ whereas a public war, both by land and sea, is and hath
 “ been carried on by persons exercising the powers of go-
 “ vernment in France, that you, the said Oliver Bond, not hav-
 “ ing the fear of God before your eyes, did aid and assist the
 “ French and men of France to invade this kingdom, to
 “ overturn by force the government of this kingdom, and to
 “ compass and imagine the death of the King, and so forth.
 “ On this indictment, you, Oliver Bond, have been this day
 “ arraigned, and have pleaded not guilty, and for trial have
 “ put yourself on God and your country.”

Mr. CURRAN, in defence of Mr. BOND, said,—

My Lords, and Gentlemen of the Jury, I am Counsel for
 the Prisoner at the bar—it is my *duty* to lay his case before
 you. It is a *duty* that at any time would be a *painful* one
 to me, but at present peculiarly so; having, in the course
 of this long trial, experienced great fatigue both of mind
 and of body; a fatigue I have felt in common with the
 learned Judges who preside on the bench, and with my
 brethren of the bar: I feel as an advocate for my client the

duty of the awful obligation that has devolved on me.—I do not mean, Gentlemen of the Jury, to dilate on my own personal fatigues; for I am not in the habit of considering my personal ill state of health, or the anxiety of my mind, in discharging my duty to clients in such awful situations as in the present momentous crisis; I have not been in the habit, Gentlemen of the Jury, to expatiate to you on personal ill health; in addressing myself to Jurors on any common subject, I have been in the habit of addressing myself to the interposition of the Court, or to the good-natured consideration of the Jury, on behalf of my client. I have mentioned, indeed, my own enfeebled worn-out body, and my worn-out state of mind, not out of any paltry respect to myself, nor to draw your attention to myself, but to induce you to reflect upon this, that in the weakness of the advocate, the case of my client, the Prisoner at the bar, is not implicated; for his case is so strong in support of his *innocence*, that it is not to be weakened by the imbecility or the fatigue of the advocate.

Gentlemen of the Jury, I lament that this case has not been brought forward in a simple, and in the usual way, without any extraneous matter being introduced into it, as I think in justice, and as I think in humanity, it ought to have been. I lament that any little artifices should be employed upon so great and solemn a case as this, more especially in desperate times, than upon more ordinary occasions; and that some allegations of criminality have been introduced, as to persons and things, that ought not in my opinion to have been adverted to in a case like this. What, for instance, has this case to do with the motion made by Lord Moira, in the House of Lords in Ireland, in February last, or the accidental conversations with Lord Edward Fitzgerald? If you have a feeling for virtue, I trust that Lord Moira will be revered as a character that adds a dignity to the peerage. What made that noble character forego his great fortune, quit his extensive demesnes, and the tranquillity of the philosophic mind, but the great and glorious endeavour to do service to his country? I must repeat, he is an honour to the Irish peerage. Let me ask, why was the name of Lord Moira, or Lord Wycombe (who happened to dine at Sir Duke Giffard's) introduced into this trial? what has that motion which Lord Moira introduced in the House of Lords to do with the trial of Mr. Oliver Bond on a charge of high treason? Gentlemen of the Jury, you have been addressed as against a person by

whom a fire has been supposed to have been kindled, and this too at the period of being extinguished. (An ignorant person in the crowded gallery having occasioned noise in the Court, prevented the learned Advocate a few minutes from proceeding—the Court said they would punish any person who dared to interrupt the Counsel for the Prisoner, and it hoped Mr. Curran would be able to proceed in stating the Prisoner's case.) Mr. Curran, in continuing—I have very little power to be able to discharge my *duty*, but I impute the interruption to mere accident; I cannot suppose it was levelled against me, but I am afraid it was excited by prejudice—the Court remarked, they would maintain the peace and decorum of the Court, and they would guard the Prisoner from any prejudice. “Mr. Curran, you will state the facts of the Prisoner's case to the Jury, and shall not be interrupted.”) Mr. Curran, in continuation, said:—Gentlemen of the Jury, I was cautioning you against being prejudiced against my unfortunate client; I fear there is much reason why I should caution you against the influence of prejudice against the Prisoner at the bar. You are to decide on your verdict by the evidence given, and the evidence that on the part of the Prisoner will be laid before you; and you will see that the evidence does not support the prosecution. You will banish any prejudices, and let your verdict be the result of cool and deliberate investigation, and not given in the heat of the season, when men's minds may be inflamed by the circumstances of the times. I shall lay before you the case of my client, to controvert the evidence given on the part of the prosecution; and shall offer to your consideration some observations in point of law, under the judicial controul of the Court as to matter of law. I will strip my client's case from the extraneous matter that has been attempted to be fastened on it. I feel myself, Gentlemen, warmed, when I speak to you in favour of my client's innocency, and to bring his innocency home to your judgments. I know the honesty and rectitude of your characters, and I know my client has nothing to fear from your understandings.

It is my duty to state to you, we have evidence to prove that the witness on the part of the prosecution is undeserving of credit; and it is my duty to examine into the moral character of the witness that has been produced. It is of the utmost concern you should do this, as your verdict is to decide on the life or death, the fame or dishonour, of the Prisoner at the Bar. With respect to prosecutions brought

forward by the state, I have ever been of opinion that the decision is to be by the Jury; and that as to any matter of law, the Jury do derive information from the Court: for Jurors have by the constitution a fixed and permanent power to decide on matter of fact, and the letter of the law the Sovereign leaves to be expounded by the mouth of the King's Judges. Some censure upon former occasions has fallen on former Judges, from a breach of this doctrine. Upon a former occasion I differed in opinion from the learned Judge who then presided, as to what I construed to be the law of high treason, touching the compassing or imagining the death of the King. I am not ashamed of the opinion I entertained. As a point of law, I never shall be ashamed of it. I am extremely sorry I should differ from the bench on a point of law, but Judges have had different opinions upon the same subject. Where an overt act is laid, of compassing and imagining the death of the King, it does not mean in construction of law, the natural dissolution of the King; but where there was not the fact acted upon, but confined merely to the *intention* a man had, such *intention* must, according to Lord Coke and Sir M. Foster, be proved by *two witnesses*. In England, the statute of Edward III. provides against the event of the death of the King by any person levying war, whereby his life might become endangered; and the proof of such overt act must be substantiated by two witnesses; how it comes not to be settled and required in Ireland, is not accounted for. Before the statute of Edward III. the law relative to high treason was undefined, which tended to oppress and harass the people; for, by the common law of England, it was formerly a matter of doubt whether it was necessary to have two witnesses to prove an overt act of high treason. Lord Coke says, that in England there must be two witnesses to prove an overt act; it seems he was afterwards of a contrary opinion. In the reign of William III. a statute passed, and by that statute it appears there must be *two witnesses*. When that statute came to be enacted here, the clause relative to there being *two witnesses* to an overt act of high treason was not made the law in Ireland; but why it was not required in Ireland is not explained. By the English act of William III. in England, the overt act must be proved by two witnesses in England, but it does not say in *Ireland*. Surely, as the common law of England and the common law of Ireland are the same, the consciences of an Irish Jury ought to be fully satisfied by the *testimony of two witnesses*

to an overt act. On this point, however, some of the Irish Judges are of opinion, that *two witnesses* are not in *Ireland* required to substantiate an overt act—therefore their opinion must be acquiesced in. Here Mr. Curran mentioned the possibility of Confucius, Plato, Solon, or Tully, or any other great philosopher, differing on a particular point. He contended, that by the statute of William III. in order to have a just and equal trial, there must be two witnesses to prove an overt act. Blackstone and Montesquieu were of opinion we should have the equal protection to our liberties; why then should not a Jury in Ireland require the same evidence, namely, two witnesses to the alleged treason, as well as a Jury in England? The learned Counsel again referred to the statutes of Edward III. and William III. to Blackstone's Commentaries, Montesquieu's Spirit of Laws, Coke on Littleton, and Sir Michael Foster's Pleas of the Crown, for various enactments and opinions upon the law of high treason.

And now, Gentlemen of the Jury (continued Mr. Curran), let me state to you in the clearest point of view the defence of the Prisoner at the bar, and see what has been the nature of the evidence adduced. The Prisoner at the bar is accused of compassing or imagining the death of the King, and of adhering to the King's enemies:—the evidence against him is *parole* and *written* evidence. Gentlemen of the Jury, I will venture to observe to you, that as to the *written* evidence, if suffered to go before you by the Court, it is only as evidence at large; but as to the credibility of it, that is for you to decide upon. Mr. Reynolds, in his *parole* testimony, has sworn, that he was made a United Irishman by the Prisoner at the bar. Mr. Reynolds says, he was *sworn* to what he considered to be the *objects* of that society—he stated them to you; but whether true or false, is for you to determine, by the credit you may give to his testimony. This is the *third* time Mr. Reynolds has appeared in a Court of Justice, to prosecute the Prisoners.* He says, the *objects* of the United Irishmen are to overturn the present government, and to establish a republican form of government in its stead, and to comfort and abet the French, on their invading this kingdom, should such an event take place. You have heard his testimony, let me ask, do you think him incapable of being a villain? do you think him to be a villain? You observed with what kind of pride he gave his testimony—do

* This is the same Reynolds who afterwards sat as a Grand Jurymen of Middlesex, on the finding of the Bills against Watson and others, tried for high treason, at Westminster, in 1817.

you believe his evidence by the solemn oath that you have taken? or do you believe it was a blasted perjury? can you give credit to any man of a blasted character?

It has been the misfortune of many former Jurors to have given their verdict founded upon the evidence of a perjured witness, and on their death-bed they repented of their credulity, in convicting a man upon false testimony. The history of former ages is replete with such conduct, as may be seen in the State Trials. In the case of Lord Kimbolton and Titus Oates—the then Jurors convicted that nobleman; but some time after his death, the Jurors discovered they had given implicit credit to a witness unworthy of it; and the lawyers of those times might have said, “I thank God, they have done the deed.” Does not the history of human infirmity give many instances of this kind? Gentlemen, let me bring you more immediately to the case before you. Had we no evidence against Reynolds, but his own solitary evidence, from the *whole* of his evidence, you cannot establish the guilt of the Prisoner at the bar—take the whole of his evidence into your consideration, it may appear he is unworthy of credit. He told you he got information from M'Cann on the Sunday morning, that the meeting was to be on Monday morning, at ten o'clock. Reynolds goes immediately to Mr. Cope, and gives him that information. On Sunday afternoon, he goes to Lord Edward Fitzgerald, and shows him the orders issued by Captain Saurin to the lawyer's corps: then, said Lord Edward, I fear government intend to arrest me; I will go to France, and hasten them to invade this country; government has no information of the meeting of the provincial delegates at Bond's? No, no, says Reynolds, that is impossible. Reynolds wrote to Bond, that he could not attend the meeting, as his wife was ill—Reynolds did not go to the meeting. Bond was arrested on the Monday morning; on Monday evening, at eight at night, Reynolds goes to Lord Edward, in Aungier-street, meets him, and goes again to him the next night; and Lord Edward conversed with Reynolds about his (Lord Edward's) going to France. Reynolds then went to Kildare; he gave the most solemn assurance to the delegates at a meeting there, that he never gave information of the meeting at Bond's. Now see how many oaths Reynolds has taken. He admits he took two of the oaths of the obligations to the society of United Irishmen. He told you Lord Edward advised him to accept the appointment of colonel in the Kildare United Irishmen's army; and yet he says, he afterwards went to Bond's, and

Bond advised him to be a colonel. It appears in evidence, that Reynolds was treasurer:—he took two more oaths, one as colonel, and one as treasurer—and he took the oath of allegiance also—and he took oath to the truth of his testimony, at the two former trials, and at this. On which do you give him credit? Gentlemen, in order to narrow the question under your consideration, I may observe that what Reynolds said, relative to Lord Edward's conversation, is totally out of this case: it can have no weight at all on the trial of Mr. Bond for high treason, in the finding of your verdict. How, or in what manner, is the Prisoner at the bar to be affected by it? I submit to your Lordship, that the declaration of Lord Edward to Reynolds, when Bond was not present, is not attachable to the Prisoner.

Mr. Reynolds has given you a long account of a conversation he had with Mr. Cope, relative to the proceedings of the society of United Irishmen; and Mr. Cope said, if such a man could be found, as described by Mr. Reynolds, who would come forward and give information, he would deserve the epithet of saviour of his country. Thus, by Reynolds's evidence, it would seem that Mr. Cope was the little pony of repentance to drive away the gigantic crimes of the *colossus Reynolds*. But remember, said Mr. Reynolds, though I give information, I won't sacrifice my morality; I won't come forward to prosecute any United Irishman. No, no; like a bashful girl, higgling about the price of her virginity, I am determined, says Reynolds, to preserve my character—I will give the communications, but do not think I will descend to be an informer—I will acquaint you of every thing against the United Irishmen, but I must preserve my credit—I tell you the design of the United Irishmen is to overturn the constitution—I will lead you to the threshold of discovery, but I won't name any price for reward—pray don't mention it at all. Says Mr. Cope—a man would deserve a thousand or fifteen hundred a year, and a seat in Parliament, or any thing, if he could give the information you mention. No such thing is required, no such thing, says Reynolds—you mistake me; I will have nothing in the world, but merely a compensation for losses—do you think I would take a bribe? I ask only of you to give me leave to draw a little bit of a note on you for five hundred guineas, only by way of indemnity; that is all; merely for indemnity of losses I have sustained, or am liable to sustain. Gentlemen of the Jury, don't you see the vast distinction between a bribe and gratification? What

says Foigard? consider my conscience, do you think I would take a bribe? it would grieve my conscience if I was to take a bribe. To be a Member of Parliament, and declare for the ayes or the noes—I will accept of no bribe. I will only take a little indemnity for claret that may be spilt; for a little furniture that may be destroyed; for a little wear and tear; for boots and for shoes, for plate destroyed, for defraying the expenses of some pleasurable jaunts, when out of this country:—for if I become a public informer against the United Irishmen, and should continue here for some time, I may chance at some time to be killed by some of them—for I have sworn to be true to them, although I also took the oath of allegiance to be true to my Sovereign. I have taken all sorts of oaths:—if I frequent the company of those who are loyal to the King, they will despise the man who broke his oath of allegiance; and between the Loyalist and the United Irishman, I may chance to be killed. As I am in the habit of living in the world, says Mr. Reynolds to Mr. Cope, you will give me leave to draw a bit of paper on you, only for three hundred guineas at present. It will operate like a bandage to a sore leg; though it won't cure the sore, or the rottenness of the bone, it may hide it from the public view. I will, says Mr. Reynolds, be newly baptised for a draft of three hundred guineas; and become a public informer for a further bit of paper—only for another two hundred guineas; yet I trust you will excuse me, I will not positively take any more. He might, I imagine, be compared to a bashful girl, and say, What, shall the brutal arms of man attack a country maid; and, when her gown shortens, and her apron bursts asunder, and she shrinks at the view of public prostitution, shall she not stipulate for full wages? Perhaps he practised upon her virtue, when the innocent dupe thought she was gaining his affections.—Do you think that Reynolds would touch a bribe, and become an informer? No, no; he said he would be no informer—but did he not consent to do a little business in private—and did he not get money for it? Perhaps he said, I *thought* to be no villain—I would not have the world think me a villain. I can confide in myself, why should I mind what the world says of me, though it should call me villain? Even though I should become the talk of all the porter-houses, though I should become the talk of all the tea-tables, yet perjury is not brought home to me—no; no human being has knowledge of what is rankling within. Has it not been said, I was an

honest man, to come upon the public board as a public informer?—they called me an honest man, and a worthy, a respectable informer—and thus my character is at bay.

Mr. Reynolds was unfortunately an United Irishman. He told you there was a *provincial* meeting of delegates, but he has not ventured to tell you where the *provincial committee* met; he has simply said, there was a provincial committee. The meeting, he says, was on a question of great concern—I have doubts upon it: it is not stated to me what these important consultations were about. From M'Cann he heard that a *baronial* meeting was to be at Bond's on the 12th of March, and that there was *material business to transact*, and desired Reynolds to attend—that is all that Reynolds heard from M'Cann. M'Cann is now no more, and this part of the case is in doubt and obscurity. For my part, I am not satisfied that any thing criminal passed at the meeting at Bond's on the 12th of March—no man can say so on the evidence produced; they do not say it, they only *suppose* there was. Was the Jury to judge of their own present view, I do not think they would, or could come justly, to a verdict of condemnation. The question is not, whether there was any meeting at Bond's, but what was the *object* of that meeting? Bond was in the warehouse, in the custody of the guard; afterwards he came up to the room with Mr. Swan. At Bond's there was a meeting of the United Irishmen; and though Bond was not taken in that room, yet Bond's charge is mixed with the guilt of that meeting. The overt act in the indictment is, of conspiring to levy war, &c. It is material to observe, in this part of the case, it was a bare *conspiracy to levy war*; it is not, as I conceive, high treason; the bare *intention* does not amount to compassing or imagining the death of the King—it is not *adhering* to the *King's enemies*; under certain circumstances, compassing the death of the King is not high treason. This is the great hinge, as I apprehend, in this case. Gentlemen, what was the evidence given? that there was a meeting, for a *dangerous* purpose—M'Cann said, there was to be a meeting of the delegates at Bond's, on the 12th of March;—he did not tell Reynolds the purport of that meeting—therefore, Gentlemen, my objection is, was that a *provincial meeting*? it rests on the evidence of other Witnesses. It was M'Cann told Reynolds, you must be at the *Convention* on the 12th of March, to compass the death of the King, and overturn the Government;—but *Bond* did not tell him any such thing—Bond

only said, M'Cann was able to give information of what was going forward at that meeting. But Bond knew nothing about it. Admitting a meeting was held in Bond's house for a guilty purpose, yet Bond might be perfectly *innocent*; he was not in the room till Mr. Swan came—there was to be a watch-word, *is M'Cann here?* from thence it would seem it was a meeting at M'Cann's suggestion. Mr. Bond probably did not know the motive, why he gave the use of the room; for there was not one word of conversation between Bond and Reynolds. Reynolds says M'Cann told him the *watch-word*; M'Cann did *not get the watch-word* from Bond, the Prisoner at the bar. The watch-word was, *is M'Cann here*; it was for the admission of no person that M'Cann *did not know*; it had no relation to Mr. Bond. Has this no weight with you, Gentlemen of the Jury? do you feel anxious to investigate the truth? If you believe Reynolds, the meeting was for the worst purpose; but was it with the knowledge of Bond? for Bond said to Reynolds, *I can give you no information; go to M'Cann, he can inform you.* Upon the evidence therefore of Reynolds rests this man's life; for the written evidence found in the room cannot in my apprehension affect Bond, if you, as no doubt you will be, are of opinion, Bond was *not in the room where the papers were found*. There is not any evidence of the conversation before Mr. Swan came, and he found on the table a paper written on, and the ink not dry,—“*I, A B, was duly elected,*”—it was *not found upon the Prisoner at the bar*:—the papers found might affect the persons in the room—but at the time of the seizure of the papers, Bond was in the warehouse, in custody of Sergeant Dugan, and was not brought up stairs until *after* the arrest. The papers found *upon* Bond might be read in evidence against him, but I conceive not those found *in the room*. What was the intention of mentioning the letter from Reynolds, found on the Prisoner at the bar? It was stated, but not read in evidence, merely to apologize for Reynolds's not attending the meeting on the 12th of March: Reynolds says he got it again, and burnt it. Reynolds did not pretend to state to you, he knew from Bond what the object of the meeting was; and it is material to observe, that Bond's name was not found entered in the *list of the persons who made returns*, and attended the meeting.

Bond has been resident in this city twenty years; in your walks of life, Gentlemen of the Jury, you never heard any thing to his prejudice, before this charge. I know my duty

to my client, and must tell you, if you have had prejudices, I know you will discard them: I am not paying you any compliment; I have spoken under the feelings of an Irishman. During the course of these trials, I have endeavoured to speak to your understandings; I have not ventured to entreat you on behalf of my client, because I am sure you will give your justice and your merits free operation in your minds and consciences at this trial. I am sure you will try the cause fairly, and admit every circumstance into your reflections. In a case between the Crown and the Prisoner, I have not ventured to address you on the public feelings. At this important crisis, you will preserve the subject for the sake of the law, and preserve the law for the sake of the crown. You are to decide by your sober and deliberate understandings, and hold the balance equal between the crown and the subject. You are called upon to pronounce your sentence of condemnation or acquittal of the Prisoner at the bar—if you should be mistaken in your verdict, it cannot shake the safety of the state. You are called upon with the less anxiety, because, which ever way your verdict may be, you are not to be told, remember the safety of your King, or your own safety; you are to have in recollection your solemn oath, to decide according to the evidence, and give such a verdict as may also be satisfactory to your consciences, at the last moment of your existence. The Court will tell you, it is your province to decide on matter of fact, and as to opinion on matter of law, the Court will explain that to you. Your verdict can never die. As to my opinions of the law, whatever they may be, I shall never have an opportunity of uttering them to you again: your verdict will stamp infamy on the Prisoner, or support the throne of the law. I need not remind you that the present moment is awful, my friends, if you suffer your consciences to be influenced, to be degraded into opinions of the consequences of your verdict:—you are bound to decide by the evidence, the glorious privilege of trial by Jury. If martial law must cut the throat of brotherly affection, the necessity of it will cease; for verdicts of honest Jurors will restore your country to peace and tranquillity; and the liberties of your country will by that means be secured. The supreme government of a nation must be protected and supported, whatever the form of that government may be: let me however ask, is there no species of law to be resorted to but terror? let me observe to you, that the moral law is destroyed, when it is stained with the

effusion of blood, and it is much to be regretted, when the terrors of the criminal law are obliged to be resorted to, to enforce obedience to the common law—for the sword may cover the land with millions of deluded men. Is it become necessary to hurl destruction round the land, till it shivers principle into a thousand particles, to the destruction of all moral law, and all moral obligation?—By the common law, no subject is to be deprived of life, but by a trial of his fellow subjects; but in times when rebellion prevails in any country, many suffer without the semblance of a trial by their equals. From the earliest period of history down to the present time, there have been seen in some parts of the earth, instances where Jurors have done little more than record the opinions given to them by the then Judges; but that is the last scene of departing liberty. I have read that, in the period of the rebellion, in the last century, in England, Jurors on trials, by the common law of the land, have been swayed in their determination by the unsupported evidence of an informer; and after-times have proved their verdict was ill founded—the innocency of the convicted persons afterwards appearing. Trials on charges of high treason are of the utmost moment to the country, not merely in respect of any individual, but of the necessity there is that the public should know the blessings of trial by Jury, and that the Jurors should solely determine on their verdict by the evidences, and maturely weigh the *credit of the Witnesses* against any Prisoner. Several of these trials of late date some of you have been present at, and you know that the object of the Court and the Jurors is to investigate the truth from the evidence produced;—the Jurors are sworn to decide, and to bring in a true verdict according to the evidence. One Witness has been examined on this trial, who I think does not deserve credit; but it is you who are the sole judges as to whom you will give credit to. Though you know this Witness has given evidence on two former trials, and though the then Jury did give credit to his testimony; yet you are not to determine on your verdict on the faith or precedent of any former Jurors, but you are to be solely guided by your own consciences. You will observe we have had here two Witnesses to impeach the character of Mr. Reynolds, that were not produced on the former trials; and you will no doubt throw out of your minds whatever did not come this day before you in evidence, on the part of the prosecution; and recollect that which will come before you on

part of the Prisoner's defence. You will find your verdict flowing from conscious integrity, and from the feelings of honourable minds, notwithstanding the evidence of the Witness Reynolds, who has been examined upon the table, and whose testimony I need not repeat to you. Perhaps you may be inclined to think he is a perjured Witness; perhaps you will not believe the story he has told against the Prisoner at the bar, and of his own turpitude. You will do well to consider it was through a perjured Witness that a Russel and a Sydney were convicted in the reign of James II.—If Juries are not circumspect to determine *only* by the evidence adduced before them, and not from any extraneous matter, nor from the slightest breath of prejudice, then what will become of our boasted trial by Jury; then what will become of our boasted constitution of Ireland? In former times, when Jurors decided contrary to evidence, it created great effusion of blood. Let me ask, will you, Gentlemen, give a verdict through infirmity of body, or through misrepresentations, or through ignorance? you, by your verdict, will give an answer to this. Gentlemen of the Jury, you will weigh in your minds, that many inhuman executions did take place in former times, though the then accused underwent the solemnity of a trial. The verdicts of those Jurors are not in a state of annihilation, for they remain on the page of history, as a beacon to future Jurors. The Judges before whom the then accused were tried, have long since paid the debt of nature;—they cannot now be called to account, why they shrunk from their duty. I call upon you, Gentlemen of the Jury, to be firm in the exercise of the solemn duty you are now engaged in. Should you be of opinion to bring in a verdict of condemnation against my unfortunate client—for myself I ought to care nothing, what impressions may actuate your minds to find such a verdict; it little regardeth me—but—it much regardeth you, to consider what kind of men you condemn to die, and before you write their bloody sentence, to consider, maturely, whether the charge against the Prisoner is fully proved. If you should, on the evidence you have heard, condemn the Prisoner to death, and afterwards repent it, I shall not live among you to trace any proof of your future repentance.

I said I rose to tell you what evidence we had to produce on behalf of my client, the Prisoner at the bar. We shall lay evidence before you, from which you can infer, that the Witness produced this day was a perjured man. We have

only to show to you, as honest men, that the Witness is not deserving of credit on his oath—we have nothing more to offer on behalf of my client, the Prisoner at the bar. It is your province to deliberate in your consciences on the evidence you will hear, whether you will believe the Witness you have heard, on his oath or not. Let me ask, will you, upon the evidence you have heard, take away the life of the Prisoner at the bar—separate him from his wife and from his little children for ever? I told you I was to state to you the evidences which we had to bring forward on behalf of my unfortunate client. I tell you it is to discredit the testimony of Mr. Reynolds. When you have heard our evidence to this point, I cannot suppose you will give your verdict to doom to death the unhappy and unfortunate Prisoner at the bar, and entail infamy on his posterity. We will also produce respectable witnesses to the hitherto unimpeached character of the Prisoner at the bar, and prove that he was a man of fair honest character. You, Gentlemen of the Jury, have yourselves known him a number of years in this city; let me ask you, do you not know that the Prisoner at the bar has always borne the character of a man of integrity, and of honest fame? and, Gentlemen of the Jury, I call upon you to answer my question by your verdict.

I feel myself impressed with the idea in my bosom, that you will give your verdict of acquittal of the Prisoner at the bar; and that by your verdict you will declare on your oaths, that you do not believe one syllable that Mr. Reynolds has told you. Let me entreat you to put in one scale, the base, the attainted, the unfounded, the perjured Witness; and in the opposite scale, let me advise you to put the testimony of the respectable Witnesses produced against Mr. Reynolds, and the Witnesses to the Prisoner's hitherto unimpeached character; and you will hold the balance with justice, tempered with mercy, as your consciences in future will approve. Let me depart from the scene of beholding human misery, should the life of my client by your verdict be forfeited. Should he live by your verdict of acquittal, he would rank as the kindest father, and protector of his little children; as the best of husbands and of friends; and ever maintain that irreproachable character he has hitherto sustained in private life. Should our Witnesses not exculpate the Prisoner from the crimes charged on him, to the extent charged in the indictment, I pray to God to give you the judgment and understanding to acquit him. Do not

imagine I have made use of any arguments to mislead your consciences, or to distress your feelings: no—but if you conceive a doubt in your minds, that the Prisoner is innocent of the crime of high treason, I pray to God to give you firmness of mind to acquit him. I now leave you, Gentlemen of the Jury, to the free exercise of your own judgments in the verdict you may give. I have not by way of supplication addressed you in argument; I do not wish to distress your feelings by supplications; it would be most unbefitting to your candour and understanding;—you are bound by your oaths to find a true verdict according to the evidence; and you do not deserve the station of Jurors, in which the constitution has placed you, if you do not discharge the trust the constitution has vested in you, to give your verdict freely and indifferently, according to your consciences.

Mr. Bond was found Guilty.

SPEECH

IN DEFENCE OF OWEN KIRWAN,

AT THE SESSIONS, GREEN STREET, ON SATURDAY, OCT. 1, 1803.

High Treason.

MR. CURRAN rose and said, that it had become his duty to state to the Court and Jury the defence of the Prisoner. He had been chosen for that very unpleasant task, without his concurrence or knowledge—but as soon as he was apprised of it, he accepted it without hesitation. To assist a human being, labouring under the most awful of all situations, trembling in the dreadful alternative of honourable life, or ignominious death, was what no man, worthy of the name, could refuse to man—but it would be peculiarly base in any person who had the honour of wearing the King's gown, to leave the King's subject undefended, until a sentence pronounced upon him had shown, that neither in fact, nor in law, could any defence avail him. He could not, however, but confess, that he felt no small consolation when he compared his present with his former situation upon similar

occasions. In those sad times to which he alluded, it was frequently his fate to come forward to the spot where he then stood, with a body sinking under infirmity and disease, and a mind broken with the consciousness of public calamity, created and exasperated by public folly. It had pleased heaven that he should live to survive both those afflictions, and he was grateful to its mercy. I now, said he, come here through a composed and quiet city—I read no expression in any face, save such as marks the ordinary feelings of social life, or the various characters of civil occupation—I see no frightful spectacle of infuriated power, or suffering humanity—I see no tortures—I hear no shrieks—I no longer see the human heart charred in the flame of its own wild and paltry passions—black and bloodless—capable only of catching and communicating that destructive fire by which it devours, and is itself devoured. I no longer behold the ravages of that odious bigotry by which we were deformed, and degraded, and disgraced—a bigotry against which no honest man should ever miss an opportunity of putting his countrymen, of all sects and of all descriptions, upon their guard. It is the accursed and promiscuous progeny of servile hypocrisy, of remorseless lust of power—of insatiate thirst of gain—labouring for the destruction of man under the specious pretences of religion. Her banner stolen from the altar of God, and her allies congregated from the abysses of hell, she acts by votaries, to be restrained by no compunctions of humanity—for they are dead to mercy; to be reclaimed by no voice of reason—for refutation is the bread on which their folly feeds: they are outlawed alike from their species and their Creator; the object of their crime is social life—and the wages of their sin is social death. Though it may happen that a guilty individual should escape from the law that he has broken, it cannot be so with nations—their guilt is too unwieldy for such escape. They may rest assured that Providence has, in the natural connexion between causes and their effects, established a system of retributive justice, by which the crimes of nations are sooner or later avenged by their own inevitable consequences. But that hateful bigotry—that baneful discord, which fired the heart of man, and steeled it against his brother, has fled at last, and I trust for ever. Even in this melancholy place, I feel myself restored and re-created by breathing the mild atmosphere of justice, mercy, and humanity—I feel I am addressing the parental authority of the law—I feel I am addressing a Jury of my

countrymen, my fellow-subjects, and my fellow-christians—against whom my heart is waging no concealed hostility—from whom my face is disguising no latent sentiment of repugnance or disgust. I have not now to touch the chords of an angry passion in those that hear me—nor have I the terror of thinking, that if those chords cannot be snapt by the stroke, they will be only provoked into a more instigated vibration.

Mr. Curran then proceeded to observe, that this happy change in the minds and feelings of all men was the natural consequence of that system of mildness and good temper which had been recently adopted, and which he strongly exhorted the Jury to imitate, and to improve upon—that they might thereby demonstrate to ourselves, to Great Britain, and to the enemy, that we were not that assemblage of fiends which we had been alleged to be—unworthy of the ordinary privilege of regular justice, or the lenient treatment of a merciful government. He said, it was of the utmost importance to be on their guard against the wicked and mischievous representation of the circumstances which called them then together—they ought not to take from any unauthenticated report those facts which they could have directly from sworn evidence. He had heard much of the dreadful extent of the conspiracy against this country—of the narrow escape of the government. They now saw the fact as it was. By the judicious adoption of a mild and conciliatory system of conduct, what was six years ago a formidable rebellion, had now dwindled down to a drunken riotous insurrection—disgraced, certainly, by some odious atrocities—its objects, whatever they were, were no doubt highly criminal—but as an attack upon the state, of the most contemptible insignificance. He did not wonder that the patrons of burning and torture should be vexed that their favourite instruments were not employed in recruiting for the rebellion. He had no doubt that had they been so employed, the effect would have followed, and that an odious, drunken insurrection, would have been easily swelled into a formidable rebellion—nor was it strange that persons so mortified should vent themselves in wanton exaggerated misrepresentation, and in unmerited censure—in slandering the nation in the person of the Viceroy—and the Viceroy in the character of the nation—and that they should do so without considering that they were weakening the common resources against the common danger, by making the different parts of the empire odious to each other, and by holding out

to the enemy, and falsely holding out, that we were too much absorbed in civil discord to be capable of effectual resistance. In making this observation, he said his wish was merely to refute a slander upon his country. He had no pretension to be the vindicator of the Lord-Lieutenant of Ireland, whose person he did not know that he had ever seen: at the same time he said, that when he was so necessarily forced upon the subject, he felt no disposition to conceal the respect and satisfaction with which he saw the King's representative comport himself as he did, at a crisis of no little anxiety, though of no considerable danger, if we may believe the evidence we heard. He thought it was a proof of his Excellency's firmness and good sense, not to discredit his own opinion of his confidence in the public safety, by an ostentatious display of unnecessary open preparation; and he thought he did himself equal honour by preserving his usual temper, and not suffering himself to be exasperated by the event, when it did happen, into the adoption of any violent or precipitate measures. Perhaps he (Mr. Curran) might even be excused if he confessed that he was not wholly free from some professional vanity, when he saw that the descendant of a great lawyer was capable of remembering, what, without the memory of such an example, he perhaps might not have done, that even in the moment of peril, the law is the best safeguard of the constitution. At all events, he felt, that a man, who at all times had so freely censured the extravagancies of power and force as he had done, was justified, if not bound, by consistency of character, to give the fair attestation of his opinion to the exercise of wisdom and humanity, *wherever* he found them, whether in a friend or in a stranger. He hoped, he said, that these preliminary observations were not wantonly and irrelevantly delaying them from the question which they were to try, and which he was ready to enter into; but there still remained a circumstance to be observed upon for a moment before they proceeded to the real subject of their inquiry, the guilt or innocence of the prisoner, the fact that had been so impressedly stated—the never to be too much lamented fate of that excellent man Lord Kilwarden. (Here Mr. Curran drew a character of him, as marked by the most scrupulous anxiety for justice, as by the mildest and tenderest feelings of humanity; and continued thus:)—Let us not wantonly slander the character of the nation, by giving any countenance to the notion, that the horror of such a crime could be extended farther than the

actual perpetration of the deed. The general indignation, the tears that were shed at the sad news of his fate, show that we are not that nest of demons on whom any general stigma could attach from such an event; the wicked wretch himself, perhaps, has cut off the very man, through whose humanity he might have escaped the consequences of other crimes; and by an hideous aggravation of his guilt, has given another motive to Providence to trace the murderer's steps, and secure the certainty of his punishment. But on this occasion the Jury should put it out of their minds, and think nothing of that valuable man, save his last advice, "that no person should perish but by the just sentence of the law;" and that advice he hoped they would honour, not by idle praise, but by strict observance.

Mr. Curran proceeded to state the charge in the indictment, and the evidence adduced; and contended that the testimony showed no fact of conspiracy—no adopted object of treason—no actual attack—no number of persons engaged, that could possibly be adequate to the accomplishment of such an object. He strongly reprobated the idea of acting upon what was called *notoriety* of rebellion—*notoriety* was at best but another name for reputation, which could not, even by law, be given in evidence in any criminal case; and which, *a fortiori*, could not sustain a verdict of conviction: but, he said, if the actual evidence of the guilt was thus weak, it was not unfair to consider the probability of such a conspiracy at the present time. It was clear from the evidence that it could not be imputed to any particular sect, or party, or faction; because no sect or faction could fail, had they acted in it, of engaging one hundred times the number of deluded instruments in their design. We may then fairly ask, is it likely that the country at large, setting even apart all moral tie of duty, or allegiance, or the difficulty, or the danger, could see any motive of interest to recommend to them the measure of separating from England, or fraternizing with France? Was there any description of men in Ireland who could expect any advantage from such a change? And this reasoning, he said, was more pertinent to the question, because politics were not now, as heretofore, a dead science, in dead language; they had now become the subject of the day, vernacular and universal: and the repose which the late system of Irish government had given the people for reflection, had enabled them to consider their own condition, and what they, or any other country, could have to hope from France, or rather from its present

master. He said he scorned to allude to that personage merely to scold or to revile him; unmeaning obloquy may show that we do not love the object, but certainly that we do not fear him. He then adverted to the present condition of Bonaparte; a stranger—an usurper—getting possession of a numerous, proud, volatile, and capricious people; getting that possession by military force—able to hold it only by force: to secure his power, he found, or thought he found, it necessary to abolish all religious establishments, as well as all shadow of freedom. He had completely subjugated all the adjoining nations. Now (said Mr. Curran) it is clear that there are but two modes of holding states, or the members of the same state, together; namely, community of interest, or predominance of force:—the former is the natural bond of the British empire; their interest, their hopes, their dangers, can be no other than one and the same, if they are not stupidly blind to their own situation; and stupidly blind indeed must they be, and justly must they incur the inevitable consequences of that blindness and stupidity, if they have not fortitude and magnanimity enough to lay aside those mean and narrow jealousies, which have hitherto prevented that community of interest and unity of effort, by which alone we can stand, and without which we must fall together. But force only can hold the requisitions of the French consul;—what community of interest can he have with the different nations that he has subdued and plundered?—clearly none. Can he venture to establish any regular and protected system of religion amongst them? Wherever he erected an altar, he would set up a monument of condemnation and reproach upon those wild and fantastic speculations which he is pleased to dignify with the name of Philosophy, but which other men, perhaps, because they are endowed with a less aspiring intellect, conceive to be a desperate anarchical atheism, giving to every man a dispensing power for the gratification of his passion, teaching him that he may be a rebel to his conscience with advantage, and to his God with impunity. Just as soon would the government of Britain venture to display the Crescent in its churches, as an honorary member of all faiths to show any reverence to the Cross in his dominions. Apply the same reasoning to Liberty:—can he venture to give any reasonable portion of it to his subjects at home, or his vassals abroad? The answer is obvious: sustained merely by military force, his unavoidable policy is to make *the army every thing, and the*

people nothing. If he ventured to elevate his soldiers into citizens, and his wretched subjects into freemen, he would form a confederacy of mutual interest between both, against which he could not exist a moment. If he relaxed in like manner with Holland, or Belgium, or Switzerland, or Italy, and withdrew his armies from them, he would excite and make them capable of instant revolt. There is one circumstance which just leaves it possible for him not to chain them down still more rigorously than he has done, and that is, the facility with which he can pour military reinforcements upon them in case of necessity. But destitute as he is of a marine, he could look to no such resource with respect to any insular acquisition; and of course he should guard against the possibility of danger, by so complete and merciless a thralldom as would make any effort of resistance physically impossible. Perhaps, my Lords, and Gentlemen (continued Mr. Curran), I may be thought the apologist, instead of the reviler of the ruler of France. I affect not either character—I am searching for the motives of his conduct, and not for the topics of his justification. I do not affect to trace those motives to any depravity of heart or of mind, which accident may have occasioned for the season, and which reflection or compunction may extinguish or allay, and thereby make him a completely different man, with respect to France and to the world; I am acting more fairly and more usefully by my country, when I show, that his conduct must be so swayed by the permanent pressure of his situation, by the control of an unchangeable and inexorable necessity, that he cannot dare to relax or relent, without becoming the certain victim of his own humanity or contrition. I may be asked, are these merely my own speculations, or have others in Ireland adopted them; I answer freely, *non meus hic sermo est.* It is, to my own knowledge, the result of serious reflection in numbers of our countrymen. In the storm of arbitrary sway, in the distraction of torture and suffering, the human mind had lost its poise and its tone, and was incapable of sober reflection; but, by removing those terrors from it, by holding an even hand between all parties, by disdaining the patronage of any sect or faction, the people of Ireland were left at liberty to consider her real situation and interest; and happily for herself, I trust in God, she has availed herself of the opportunity. With respect to the higher orders, even of those who thought they had some cause to complain, I know this to be the fact—they are not so blind as not to see

the difference between being proud and jealous, and punctilious in any claim of privilege or right between themselves and their fellow-subjects, and the mad and desperate depravity of seeking the redress of any dissatisfaction that they might feel, by an appeal to force, or by the dreadful recourse to treason and to blood. As to the humbler orders of our people, for whom I confess I feel the greatest sympathy, because there are more of them to be undone, and because, from want of education, they must be more liable to delusion; I am satisfied the topics to which I have adverted apply with still greater force to them, than to those who are raised above them. I have not the same opportunity of knowing their actual opinions; but if their opinions be other than I think they ought to be, would to God they were present in this place, or that I had the opportunity of going into their cottages, and they well know I should not disdain to visit them, and to speak to them the language of affection and candour on the subject; I should have little difficulty in showing to their quick and apprehensive minds, how easy it is, when the heart is incensed, to confound the evils which are inseparable from the destiny of imperfect man, with those which arise from the faults or errors of his political situation: I would put a few questions to their candid and unadulterated sense: I would ask them—Do you think that you have made no advance to civil prosperity within the last twenty years? Are your opinions of modern and subjugated France the same that you entertained of popular and revolutionary France fourteen years ago? Have you any hope, that if the First Consul got possession of your island, he would treat you half so well as he does those countries at his door, whom he must respect more than he can respect or regard you? And do you know how he treats those unhappy nations? You know that in Ireland there is little personal wealth to plunder—that there are few churches to rob. Can you then doubt that he would reward his rapacious generals and soldiers by parcelling out the soil of the island among them, and by dividing you into lots of serfs, to till the respective lands to which they belonged? Can you suppose that the perfidy and treason of surrendering your country to an invader would to your new master be any pledge of your allegiance? Can you suppose that while a single French soldier was willing to accept an acre of Irish ground, that he would leave that acre in the possession of a man, who had shown himself so wickedly and so stupidly dead to the suggestions

of the most obvious interest, and to the ties of the most imperious moral obligations? To what do you look forward, with respect to the aggrandizement of your sect? Are you Protestants?—he has abolished Protestantism with Christianity. Are you Catholics?—do you think he will raise you to the level of the Pope? Perhaps, and I think, he would not, but, if he did, could you hope more privilege than he has left his Holiness? And what privilege has he left him? he has reduced his religion to be a mendicant for contemptuous toleration, and he has reduced his person to beggary and to rags. Let me ask you a further question—Do you think he would feel any kind-hearted sympathy for you? Answer yourselves by asking, what sympathy does he feel for Frenchmen, whom he is ready by thousands to bury in the ocean, in the barbarous gambling of his wild ambition? What sympathy, then, could bind him to you? he is not your countryman—the scene of your birth and your childhood is not endeared to his heart, by the reflection, that it was also the scene of his: he is not your fellow-Christian—he is not, therefore, bound to you by any similarity of duty in this world, or by any union of hope beyond the grave. What, then, could you suppose the object of his visit, or the consequence of his success? Can you be so foolish as not to see, that he would use you as slaves, while he held you; and that when he grew weary, which he soon would become, of such a worthless and precarious possession, he would carry you to market in some treaty of peace, barter you for some more valuable concession, and surrender you to expiate by your punishment and degradation, the advantage you had given him by your follies and your crimes? There is another topic on which a few words might be addressed to the deluded peasant of this country: he might be asked—What could you hope from the momentary success of any effort to subvert the government by mere intestine convulsion? Could you look forward to the hope of liberty or property; where are the characters, the capacities, and the motives of those that have embarked in those chimerical projects—you see them a despicable gang of needy adventurers; desperate from guilt and poverty; uncountenanced by a single individual of probity or name; ready to use you as the instruments, and equally ready to abandon you by treachery or flight, as the victims of their crimes. For a short interval, murder and rapine might have their sway; but do not be such fools as to think, that though robbing might make a few

persons poor, it could make many persons rich. Do not be so silly as to confound the destruction of property with the partition of wealth. Small must be your share of the spoil, and short your enjoyment of it. Soon, trust me, very soon, would such a state of things be terminated by the very atrocities of its authors. Soon would you find yourselves subdued, ruined, and degraded. If you looked back, it would be to character destroyed, to hope extinguished. If you looked forward, you could see only the dire necessity you had imposed upon your governors, of acting towards you with no feelings, but those of abhorrence and of self-preservation—of ruling you by a system of coercion, of which alone you would be worthy—and of loading you with taxes (that is, selling the food and raiment which your honest labour might earn for your family), to defray the expense of that force, by which only you could be restrained.

Say not, Gentlemen, that I am inexcusably vain when I say, would to God that I had an opportunity of speaking this plain, and I trust not absurd language to the humblest orders of my countrymen. When I see what sort of missionaries can preach the doctrines of villany and folly with success, I cannot think it very vain to suppose, that they would listen with some attention and some respect to a man who was addressing plain sense to their minds—whose whole life ought to be a pledge for his sincerity and affection—who had never in a single instance deceived, or deserted, or betrayed them—who had never been seduced to an abandonment of their just rights, or a connivance at any of their excesses, that could threaten any injury to their character.

But perhaps (said Mr. Curran) I have trespassed too much upon your patience, by what may appear a digression from the question. The motive of my doing so, I perceive by your indulgent hearing, you perfectly comprehend. But I do not consider what I have said as a mere irrelevant digression, with respect to the immediate cause before you. The reasoning comes to this: the present state of this country shows, that nothing could be so stupidly and perversely wicked as a project of separation, or of French connexion—and, of course, nothing more improbable than the adoption of such a useless project. If it be then so senseless, and therefore so improbable, how strong ought the evidence to be on which you would be warranted in attesting on your oaths, to England and to France, so odious an imputation on the good sense and loyalty of your country. Let me

revert again to the evidence which you have heard to support so incredible a charge. I have already observed on the contemptible smallness of the number—a few drunken peasants, assembled in the outlets; there, in the fury of intoxication, they committed such atrocities as no man can be disposed to defend or to extenuate; and having done so, they flee before a few peace-officers, aided by the gallantry of Mr. Justice Drury—who, even if he did retreat, as has been insinuated, has at least the merit of having no wish to shed the blood of his fellow-Christians, and is certainly entitled to the praise of preserving the life of a most valuable citizen and loyal subject.

In this whole transaction, no attempt, however feeble or ill-directed, is made on any place belonging to or connected with the government. They never even approach the barrack, the castle, the magazines. No leader whatsoever appears; nothing that I can see to call for your verdict, except the finding the bill, and the uncorroborated statement of the Attorney-General. In that statement, too, I must beg leave to guard you against mistake in one or two particulars:—as to what he said of my Lord Kilwarden, it was not unnatural to feel as he seemed to do at the recollection, or to have stated that sad event as a fact that took place on that occasion—but I am satisfied he did not state it with the least intention of agitating your passions, or of letting it have the smallest influence on your judgment, in your inquiry into a charge of treason. I must beg leave also to say, that no recital in any statute is any evidence whatsoever of the existence of any particular fact of treason or treasonable conspiracy. I must further desire you to blot completely from your minds, the reference which he was pleased to make to the verdict of yesterday.—And in truth, when I see the evidence on which you are to decide, reduced to what is legal or admissable, I don't wonder that Mr. Attorney-General himself should have treated this doughty rebellion with the laughter and contempt it deserved. Where now is this providential escape of the government and the castle? why, simply in this, that nobody attacked either the one or the other; and that there were no persons that could have attacked either. It seems not unlike the escape which a young man had of being shot through the head at the battle of Dettingen, by the providential interference by which he was sent twenty miles off on a foraging party, only ten days before the battle.

I wish from my heart that there may be now present

some worthy gentleman, who may transmit to Paris a faithful account of what has this day passed. If so, I think some loyal absentee may possibly find an account of it in the *Publiciste* or the *Moniteur*—and perhaps somewhat in this way—“On the 23rd of July last, a most splendid rebellion displayed her standard in the metropolis of Ireland, in a part of the city, which in their language is called the *Poddle*. The band of heroes that came forth at the call of patriotism, capable of bearing arms, at the lowest calculation must have amounted to little less than *two hundred* persons. The rebellion advanced with a most intrepid step, till she came to the site of the Old Four Courts, and Tholsel. There she espied a decayed pillory, on which she mounted, in order to reconnoitre, but she found, to her great mortification, that the rebels had staid behind. She therefore judged it right to make her escape, which she effected in a masterly manner, down *Dirty Lane*; the rebels at the same time retiring in some disorder from the *Poddle*, being hard pressed by the poles and lanterns of the watchmen, and being additionally galled by Mr. Justice Drury, who came to a most unnerving aim upon their rear, on which he played without any intermission, with a spy-glass from his dining-room window—*Raro antecedentum scelestum deserit Pœna pede claudo*. It is clearly ascertained that she did not appear in her own clothes, for she threw away her regimental jacket before she fled, which has been picked up, and is now to be seen at Mr. Carleton’s, at sixpence a head for grown persons, and three-pence for a nurse and child. It was thought at first to be the work of an Irish artist, who might have taken measure in the absence of the wearer; but by a bill and receipt found in one of the pockets, it appears to have been made by the actual body-tailor of her August Highness the Consort of the First Consul. At present it is but poorly ornamented, but it is said that the Irish volunteers have entered into a subscription to *trim* it, if it shall be ever worn again.” Happy, most happy, is it for these islands (said Mr. Curran), that those rumours which are so maliciously invented and circulated to destroy our confidence in each other, to invite attack, and dispirit resistance, turn out, upon inquiry, to be so ludicrous and contemptible, that we cannot speak of them without laughter, or without wonder that they did not rather form the materials of a farce in a puppet-show, than of a grave prosecution in a Court of Justice.

Mr. Curran said, there was still another topic material to remind the Jury of—this was the first trial for treason that

had occurred since the union of these islands. He said no effectual union could be achieved by the mere letter of a statute. Do not imagine (said he) that bigotry could blend with liberality, or barbarism with civilization. If you wish to be really united with Great Britain, teach her to respect you, and do so by showing her that you are fit objects of wholesome laws—by showing that you are capable of rising to a proud equality with her in the exercise of social duties and civil virtues, as many parts of the globe have proved you to be in her fleets and her armies;—show her that you can try this cause as she would try it; that you have too much sense and humanity to be borne away in your verdict by despicable panic, or brutal fury;—show her, that in prosecutions by the state, you can even go a step beyond her, and that you can discover and act upon those eternal principles of justice, which it has been found necessary in that country to enforce by the coercion of law: you cannot (said he) but feel that I allude to their statute that requires *two* witnesses in treason. Our statute does not contain that provision; but if it was wise to enact it *there*—as a law, it cannot be other than wise to adopt it *here*—as a principle; unless you think it discreet to hold it out as your opinion, that the life of man is not so valuable here, and ought not to be so secure, as in the other part of the empire; unless you wish to prove your capability of equal rights and equal liberty with Britain, by consigning to the scaffold your miserable fellow-subject, who, if tried in England on the same charge and the same evidence, would by law be entitled to a verdict of acquittal. I trust you will not so blemish yourselves—I trust you will not be satisfied even with a cold imitation of her justice—but on this occasion you will give her an example of magnanimity, by rising superior to the passion or the panic of the moment. If in any ordinary case, in any ordinary time, you have any reasonable doubt of guilt, you are bound by every principle of law and justice to acquit. But I would advise you, at a time like this, rather to be lavish than parsimonious in the application of that principle—even though you had the strongest suspicion of culpability, I would advise you to acquit—you would show your confidence in your own strength—that you felt your situation too high to be affected in the smallest degree by the fate of so insignificant an individual; turn to the miserable prisoner himself—tainted and blemished, as he possibly may be—even him you may retrieve to his country and his duty, by a salutary effort of

seasonable magnanimity. You will inspire him with reverence for that institution, which knows when to spare, as well as when to inflict; and which—instead of sacrificing him to a strong suspicion of his criminality—is determined, not by the belief, but by the possibility of his innocence, and dismisses him with indignation and contemptuous mercy.

Mr. Kirwan was found guilty.

SPEECH

IN DEFENCE OF MR. PATRICK FINNEY,

ON TUESDAY, JANUARY 16, 1798.

High Treason.

The first count of the indictment charged—“ That Patrick
“ Finney, yeoman, on the 30th day of April, in the 37th
“ year of the King, and divers other days, at the City of
“ Dublin, being a false traitor, did compass and imagine the
“ death of our said Lord the King, and did traitorously and
“ feloniously intend our said Lord the King to kill, murder,
“ and put to death.”

The overt acts laid were as follow:—“ 1. Adhering to the
“ persons exercising the powers of government in France, in
“ case they should invade, or cause to be invaded, this
“ kingdom of Ireland, they being enemies to the King, and
“ at war.—2. That the conspirators aforesaid did meet, &c.
“ confer, consult, and deliberate, about adhering to the
“ persons exercising the powers of government in France.—
“ 3. Adhering to the persons exercising the powers of
“ government in France.—4. Conspiring that one or more
“ persons should be sent into France, to excite an invasion
“ of Ireland.—5. Conspiring that one or more persons should
“ be sent into France, to excite an invasion of this kingdom,
“ and to make war therein; and for that purpose did ask,
“ levy, and receive, &c. from other traitors, money, to wit,
“ from each £20. to defray the expenses of the persons to be

“ sent.—6. That conspiring, &c. they did send into France
 “ four persons unknown, to excite the persons exercising
 “ the powers of government in France to invade this
 “ kingdom, and make war therein.—7. Conspiring to send,
 “ and sending, four persons into France, to persuade invasion,
 “ and to aid them in invading, and raising, and making war;
 “ and Finney, then and there, demanding and receiving
 “ money, viz. £20. to defray the charges of said persons.—
 “ 8. That said Patriek Finney became an United Irishman
 “ for the purpose of assisting the persons exercising the
 “ powers of government in France, and being met to the
 “ number of forty-eight other traitors, did divide into four
 “ splits, each of which contained twelve traitors, and each split
 “ did then choose one to be secretary, to consult on behalf
 “ thereof with other splits, under the denomination of
 “ baronial meetings, for the purpose of adhering and making
 “ war, in case of an invasion of Ireland from France, and
 “ then and there conspiring an attack upon the Castle of
 “ Dublin, &c. and to deprive his Majesty of the stores and
 “ ammunition therein; and said Finney, to facilitate such
 “ attack, did advise and commend other traitors to view
 “ White’s Court, &c. and give their opinion to their several
 “ splits, so that their secretaries might report the same
 “ to their baronial meetings.—9. Adhering to the persons
 “ exercising the powers of government in France, &c. and
 “ with forty-eight other conspirators, divided into four splits,
 “ each containing twelve, each split choosing a secretary to
 “ confer for the purpose of adhering to the enemy in case of
 “ invasion, and confederating and agreeing that a violent
 “ attack should be made on the ordnance stores, &c.—
 “ 10. Consulting, &c. to procure an invasion.—11. Consulting
 “ to raise insurrection, rebellion, and war, in case of invasion
 “ of Ireland, or Great Britain, from France.—12. Conspiring
 “ to assist the persons exercising the powers of government
 “ in France, in case of their invading this realm, with ships
 “ and arms.” There was a second count, for “ adhering to
 “ the King’s enemies within the realm;” and in support of
 this count, the overt acts laid were exactly the same as
 those above recited.

The Attorney-General having stated the case on the part
 of the Crown, and the evidence being gone through, Mr.
 Curran spoke as follows:—

My Lords, and Gentlemen of the Jury. In the early
 part of this trial, I thought I should have had to address
 you on the most important occasion possible, on this side of

the grave—a man labouring for life, on the casual strength of an exhausted, and, at best, a feeble advocate. But, Gentlemen, do not imagine that I rise under any such impressions—do not imagine that I approach you sinking under the hopeless difficulties of my cause. I am not now soliciting your indulgence to the inadequacy of my powers, or artfully enlisting your passions at the side of my client. No, Gentlemen; but I rise with what of law, of conscience, of justice, and of constitution, there exists within this realm at my back, and, standing in front of that great and powerful alliance, I *demand* a verdict of acquittal for my client!—What is the opposition of evidence! It is a tissue which requires no strength to break through; it vanishes at the touch, and is sundered into tatters.

The Right Honourable Gentleman who stated the case in the first stage of this trial, has been so kind as to express a reliance, that the Counsel for the Prisoner would address the Jury with the same candour which he exemplified on the part of the Crown; readily and confidently do I accept the compliment, the more particularly, as in my cause I feel no temptation to reject it. Life can present no situation wherein the humble powers of man are so awfully and so divinely excited, as in defence of a fellow-creature placed in the circumstances of my client: and if any labours can peculiarly attract the gracious and approving eye of heaven, it is when God looks down on a human being assailed by human turpitude, and struggling with practices against which the Deity has placed his special canon, when he said—“Thou shalt not bear *false witness* against thy neighbour—thou shalt do no *murder*!”

Gentlemen, let me desire you again and again to consider all the circumstances of this man's case, abstracted from the influence of prejudice and habit; and if aught of passion assumes dominion over you, let it be of that honest, generous nature, that good men must feel when they see an innocent man depending on their verdict for his life: to this passion I feel myself insensibly yielding; but unclouded, though not unwarmed, I shall, I trust, proceed in my great duty.—Wishing to state my client's case with all possible succinctness which the nature of the charge admits, I am glad my learned colleague has acquitted himself on this head already to such an extent, and with such ability, that anything I can say will chance to be superfluous—in truth, that honesty of heart, and integrity of principle, for which all must give him credit, uniting with a sound judgment

and sympathetic heart, have given to his statement all the advantages it could have derived from these qualities. He has truly said, that "the declaratory act, the twenty-fifth of Edward III. is that on which all charges of high treason are founded;" and I trust the observation will be deeply engraven on your hearts. It is an act made to save the subject from the vague and wandering uncertainty of the law. It is an act which leaves it no longer doubtful whether a man shall incur conviction by his own conduct, or the sagacity of Crown construction: whether he shall sink beneath his own guilt, or the cruel and barbarous refinement of Crown prosecution. It has been most aptly called the blessed act; and oh! may the great God of justice and of mercy give repose and eternal blessing to the souls of those honest men by whom it was enacted! By this law, no man shall be convicted of high treason, but on proveable evidence; the overt acts of treason, as explained in this law, shall be stated clearly and distinctly in the charge; and the proof of these acts shall be equally clear and distinct, in order that no man's life may depend on partial and wicked allegation. It does every thing for the Prisoner, which he could do himself—it does every thing but utter the verdict, which alone remains with you; and which, I trust, you will give in the same pure, honest, saving spirit, in which that act was formed. Gentlemen, I would call it an omnipotent act, if it could possibly appal the informer from our Courts of Justice; but law cannot do it—religion cannot do it—the feelings of human nature, frozen in the depraved heart of the wretched informer—cannot be thawed!

Law cannot prevent the envenomed arrow from being pointed at the intended victim; but it has given him a shield in the integrity of a Jury! Every thing is so clear in this act, that all must understand:—the several acts of treason must be recited, and proveable conviction must follow.—What is proveable conviction? Are you at a loss to know? Do you think if a man comes on the table, and says—"By virtue of my oath, I know of a conspiracy against the state, and such and such persons are engaged in it"—do you think his mere allegation shall justify you in a verdict of conviction? A witness coming on this table, of whatsoever description, whether the noble Lord who has been examined, or the honourable Judges on the bench, or Mr. James O'Brien, who shall declare upon oath that a man bought powder, ball, and arms, intending to kill another—this is not proveable conviction; the unlawful intention

must be shown by cogency of evidence, and the credit of the witness must stand strong and unimpeached. The law means not, that infamous assertion or dirty ribaldry is to overthrow the character of a man; even in these imputations, flung against the victim, there is fortunately something detergent, that cleanses the character it was destined to befoul.

In stating the law, Gentlemen, I have told you that the overt acts must be laid and proved by positive testimony of untainted witnesses; and in so saying, I have only spoken the language of the most illustrious writers on the law of England. I should, perhaps, apologize to you for detaining your attention so long on these particular points, but that in the present disturbed state of the public mind, and in the abandonment of principle, which it but too frequently produces, I think I cannot too strongly impress you with the purity of legal distinction, so that your souls shall not be harrowed with those torturing regrets, which the return of reason would bring along with it, were you, on the present occasion, for a moment to resign it to the subjection of your passions; for these, though sometimes amiable in their impetuosity, can never be dignified and just, but under the control of reason. The charge against the Prisoner is twofold—compassing and imagining the King's death, and adhering to the King's enemies. To be accurate on this head is not less my intention than it is my interest; for if I fall into errors, they will not escape the learned Counsel who is to come after me, and whose detections will not fail to be made in the correct spirit of Crown prosecution. Gentlemen, there are no fewer than thirteen overt acts, as described, necessary to support the indictment; these, however, it is not necessary to recapitulate. The learned Counsel for the Crown has been perfectly candid and correct in saying, that if any of them support either species of treason charged in the indictment, it will be sufficient to attach the guilt. I do not complain that on the part of the Crown it was not found expedient to point out which act or acts went to support the indictment; neither will I complain, Gentlemen, if you fix your attention particularly on the circumstance. Mr. Attorney-General has been pleased to make an observation, which drew a remark from my colleague, with which I fully agree, that the atrocity of a charge should make no impression on you; it was the judgment of candour and liberality, and should be yours—nor though you should more than answer the high opinion I

entertain of you, and though your hearts betray not the consoling confidence which your looks inspire, yet do not disdain to increase your stock of candour and liberality, from whatsoever source it flows;—though the abundance of my client's innocence may render him independent of its exertions, your country wants it all. You are not to suffer impressions of loyalty, or an enthusiastic love for the sacred person of the King, to give your judgments the smallest bias. You are to decide from the evidence which you have heard; and if the atrocity of the charge were to have any influence with you, it should be that of rendering you more incredulous to the possibility of its truth.

I confess I cannot conceive a greater crime against civilized society, be the form of government what it may, whether monarchical, republican, or, I had almost said, despotic, than attempting to destroy the life of the person holding the executive authority—the Counsel for the Crown cannot feel a greater abhorrence against it than I do; and happy am I, at this moment, that I can do justice to my principles, and the feelings of my heart, without endangering the defence of my client, and that defence is, that your hearts would not feel more reluctant to the perpetration of the crimes with which he is charged, than the man who there stands at the bar of his country, waiting until you shall clear him from the foul and unmerited imputation—until your verdict, sounding life and honour to his senses, shall rescue him from the dreadful fascination of the informer's eye. The overt acts in the charge against the Prisoner are many, and all apparently of the same nature, but they, notwithstanding, admit of a very material distinction; this want of candour I attribute to the base imposition of the Prosecutor on those who brought him forward. You find at the bottom of the charge a foundation-stone attempted to be laid by O'Brien—the deliberations of a society of United Irishmen—and on this are laid all the overt acts. I said the distinction was of moment, because it is endeavoured to be held forth to the public, to all Europe, that, at a time like this, of peril and of danger, there are, in one province alone, one hundred and eleven thousand of your countrymen combined for the purpose of destroying the King, and the tranquillity of the country, which so much depends on him—an assertion which you should consider of again and again, before you give it any other existence than it derives from the attainting breath of the informer. If nothing should induce that consideration but the name

of *Irishman*, the honours of which you share—a name so foully, and, as I shall demonstrate, so falsely aspersed—if you can say that one fact of O'Brien's testimony deserves belief, all that can from thence be inferred is, that a great combination of mind, and will, exists on some public subject. What says the written evidence on that subject? What are the obligations imposed by the test-oath of the society of United Irishmen? Is it unjust to get rid of religious differences and distinction? Would to God it were possible! Is it an offence against the state, to promote a full, free, and adequate representation of all the people of Ireland in Parliament? If it be, the text is full of its own comment, it needs no comment of mine. As to the last clause, obliging to secrecy:—now, Gentlemen of the Jury, in the hearing of the Court, I submit to the opposite Counsel this question, I will make my adversary my arbiter—taking the test-oath, as thus written, is there any thing of treason in it? However objectionable it may be, it certainly is not treasonable: I admit there may be a colourable combination of words to conceal a real bad design, but to what evils would it not expose society, if, in this case, to *suppose* were to *decide*. A high legal authority thus speaks on this subject:—"Strong indeed must the evidence be, which goes to prove that any man can mean by words any thing more than what is conveyed in their ordinary acceptation." If the test of any particular community were an open one; if, like the London Corresponding Society, it was to be openly published, then, indeed, there might be a reason for not using words in their common application, but—subject to no public discussion, at least not intended to be so—why should the proceedings of those men, or the obligation by which they are connected, be expressed in the phraseology of studied concealment? If men meet in secret, to talk over how best the French can invade this country, to what purpose is it that they take an engagement different in meaning? Common sense rejects the idea!

Gentlemen, having stated these distinctions, I am led to the remaining divisions of the subject you are to consider. I admit, that because a man merely takes this obligation of union, it cannot prevent his becoming a traitor if he pleases; but the question for you to decide on would then be, whether every man who takes it must necessarily be a traitor? Independent of that engagement, have any superadded facts been proved against the Prisoner? What is the evidence

of O'Brien? What has he stated? Here, Gentlemen, let me claim the benefits of that great privilege, which distinguishes trial by Jury in this country from all the world. Twelve men, not emerging from the must and cobwebs of a study, abstracted from human nature, or only acquainted with its extravagancies; but twelve men, conversant with life, and practised in those feelings which mark the common and necessary intercourse between man and man—such are you, Gentlemen. How, then, does Mr. O'Brien's tale hang together? Look to its commencement. He walks along Thomas Street, in the open day (a street not the least populous in this city), and is accosted by a man, who, without any preface, tells him he'll be murdered before he goes *half* the street, unless he becomes a United Irishman! Do you think this is a probable story? Suppose any of you, Gentlemen, be a United Irishman, or a Freemason, or a Friendly Brother, and that you met me walking *innocently* along—just like Mr. O'Brien—and meaning *no harm*, would you say, “Stop, Mr. Curran, don't go further, you'll be murdered before you go half the street, if you do not become a United Irishman, a Freemason, or a Friendly Brother.” Did you ever hear so *coaxing* an invitation to *felony* as this? “Sweet Mr. James O'Brien! come in and save your precious life, come in and take an oath, or you'll be murdered before you go half the street! Do, sweetest, dearest Mr. James O'Brien, come in, and do not risk your valuable existence.” What a loss had he been to his King, whom he loves so marvellously! Well, what does poor Mr. O'Brien do? Poor, dear man, he stands petrified with the magnitude of his danger—all his members refuse their office—he can neither run from the danger, nor call out for assistance; his tongue cleaves to his mouth, and his feet incorporate with the paving-stones—it is in vain that his expressive eye silently implores protection of the passenger; he yields at length, as greater men have done, and resignedly submits to his fate; he then enters the house, and being led into a room, a parcel of men *make faces* at him—but mark the metamorphosis—well may it be said, that “Miracles will never cease,”—he who feared to resist in open air, and in the face of the public, becomes a *bravo*, when pent up in a room, and environed by *sixteen* men, and one is obliged to bar the door, while another swears him, which, after some resistance, is accordingly done, and poor Mr. O'Brien becomes a United Irishman, for no earthly purpose whatever, but merely to save his sweet life! But this is not all—the pill so bitter to

the percipieny of his loyal palate, must be washed down ; and lest he should throw it off his stomach, he is filled up to the neck with beef and whiskey.—What further did they do?

Mr. O'Brien, thus persecuted, abused, and terrified, would have gone and lodged his sorrows in the sympathetic bosom of the Major ; but to prevent him even this little solace, they made him drunk. The *next* evening they used him in the like barbarous manner ; so that he was not only sworn against his will, but, poor man, he was made drunk against his inclination. Thus was he besieged with *united* beef-steaks and whiskey ; and against such potent assailants, not even Mr. O'Brien could prevail.

Whether all this whiskey that he has been *forced* to drink, has produced the effect or not, Mr. O'Brien's loyalty is better than his memory. In the spirit of loyalty he became prophetic, and told to Lord Portarlington the circumstances relative to the intended attack on the ordnance stores, full three weeks before he had obtained the information through moral agency.—Oh ! honest James O'Brien !—honest James O'Brien ! Let others vainly argue on logical truth and ethical falsehood, but if I can once fasten him to the ring of perjury, I will bait him at it, until his testimony shall fail of producing a verdict, although human nature were as vile and monstrous in you as she is in him ! He has made a *mistake* ! but surely no man's life is safe if such evidence were admissible ; what argument can be founded on his testimony, when he swears he has perjured himself, and that any thing he says must be false ?—I must not believe him at all, and by a paradoxical conclusion, suppose, against “ the damnation ” of his own testimony, that he is an *honest man* !

Strongly as I feel my interest keep pace with that of my client, I would not defend him at the expence of truth ; I seek not to make the Witness worse than he is : whatever he may be, God Almighty convert his mind ! May his reprobation,—but I beg his pardon—let your verdict stamp that currency on his credit ; it will have more force than any casual remarks of mine. How this contradiction in Mr. O'Brien's evidence occurred, I am at no loss to understand. He started from the beginning with an intention of informing against some person, no matter against whom ; and whether he ever saw the Prisoner at the time he gave the information to Lord Portarlington is a question ; but none, that he fabricated the story for the purpose of imposing on the honest zeal of the Law Officers of the Crown.

Having now glanced at a part of this man's evidence, I

do not mean to part with him entirely, I shall have occasion to visit him again; but before I do, let me, Gentlemen, once more impress upon your minds the observation which my colleague applied to the laws of high treason—that if they are not explained on the statute-book, they are explained on the hearts of all honest men; and, as St. Paul says, “though they know not the law, they obey the statutes thereof.” The essence of the charge submitted to your consideration tends to the dissolution of the connexion between Ireland and Great Britain.

I own, it is with much warmth and self-gratulation, that I feel this calumny answered by the attachment of every good man to the British constitution. I feel, I embrace its principles: and when I look on you, the proudest benefit of that constitution, I am relieved from the fears of advocacy, since I place my client under the influence of its sacred shade. This is not the idle sycophancy of words.—It is not crying “Lord! Lord!” but doing “the will of my Father who is in heaven.” If my client were to be tried by a Jury of Ludgate-hill shop-keepers, he would ere now be in his lodging. The law of England would not suffer a man to be cruelly butchered in a Court of Justice. The law of England recognizes the possibility of villains thirsting for the blood of their fellow-creatures; and the people of Ireland have no cause to be incredulous of the fact. Thus it is, that in England two witnesses are essential to the proof of high treason; and the poorest wretch that crawls on British ground, has this protection between him and those vampyres who crawl out of their graves in search of human blood. If there be but one witness, there is the less possibility of contradicting him—he the less fears any detection of his murderous tale, having only infernal communication between him and the author of all evil; and when on the table, which he makes the altar of his sacrifice, however common men may be affected at sight of the innocent victim, it cannot be supposed that the prompter of his perjury will instigate him to retribution:—this is the law in England, and God forbid that Irishmen should so differ, in the estimation of the law, from Englishmen, that their blood is not equally worth preserving. I do not, Gentlemen, apply any part of this observation to you; you are Irishmen yourselves, and I know you will act proudly and honestly. The law of *England* renders two witnesses necessary, and one witness insufficient, to take away the life of a man on a charge of high treason. This is founded on the principle of common sense, and common justice; for,

unless the subject were guarded by this wise prevention, every wretch who could so pervert the powers of invention, as to trump up a tale of treason and conspiracy, would have it in his power to defraud the Crown into the most abominable and afflicting acts of cruelty and oppression.

Gentlemen of the Jury, though from the evidence which has been adduced against the Prisoner they have lost their value, yet, had they been necessary, I must tell you, that my client came forward under a disadvantage of great magnitude, the absence of two witnesses very material to his defence—I am not now at liberty to say, what, I am instructed, would have been proved by May, and Mr. Roberts. But, you will ask, why is not Mr. Roberts here?—Recollect the admission of O'Brien, that he threatened to *settle* him, and you will cease to wonder at his absence, when, if he came, the dagger was in preparation to be plunged into his heart. I said Mr. Roberts was absent—I correct myself—No! in effect he is here—I appeal to the heart of that obdurate man (O'Brien), what would have been his (Roberts's) testimony, if he had dared to venture a personal evidence on this trial? Gracious God! is a tyranny of this kind to be borne with, where law is said to exist! Shall the horrors which surround the informer, the ferocity of his countenance, and the terrors of his voice, cast such a wide and appalling influence, that none dare approach and save the victim which he marks for ignominy and death!

Now, Gentlemen, be pleased to look to the rest of O'Brien's testimony: he tells you, there are one hundred and eleven thousand men in one province, added to ten thousand of the inhabitants of the metropolis, ready to assist the object of an invasion.—What! Gentlemen, do you think there are so many in one province—so many in your city, combined against their country? At such a time as this, do you think it a wise thing to say, on the evidence of the abominable O'Brien, that if the enemy was to invade this country, there are one hundred and eleven thousand men ready to run to his standard? But this is not the most appalling view of the question:—for its importance, and its novelty, this is the most unprecedented trial in the annals of this country. I recollect none bearing any affinity to it, save that of the unhappy wanderer, Jackson: and, promising that I mean not the smallest allusion to the conduct of public measures in this country, are you prepared, I ask you seriously, are you prepared to embark your respectable characters in the same bottom with this detestable *informer*?—Are you ready

on such evidence to take away, one by one, the lives of an hundred thousand men, by prosecutions in a Court of Justice? Are you prepared, when O'Brien shall come forward against ten thousand of your fellow-citizens, to assist him in digging the graves, which he has destined to receive them one by one? No!—could your hearts yield for a moment to the suggestion, your own reflections would vindicate the justice of God, and the insulted character of man; you would fly from the secrets of your chamber, and take refuge in the multitude, from those “compunctious visitings,” which meaner men could not look on without horror. Do not think I am speaking disrespectfully of you when I say, that while an O'Brien may be found, it may be the lot of the proudest among you to be in the dock instead of the jury-box;—how then, on such an occasion, would any of you feel, if such evidence as has been heard this day were adduced against you?

The application affects you—you shrink from the imaginary situation—remember then the great mandate of your religion, and “do unto all men as you would they should do unto you.” Why do you condescend to listen to me with such attention? why are you so anxious, if, even from me, any thing should fall tending to enlighten you on the present awful occasion? it is, because, bound by the sacred obligations of an oath, your heart will not allow you to forfeit it. Have you any doubt that it is the object of O'Brien to take down the Prisoner for the reward that follows? Have you not seen with what more than instinctive keenness this blood-hound has pursued his victim? how he has kept him in view from place to place, until he hunts him through the avenues of the Court to where the unhappy man stands now, hopeless of all succour but that which your verdict shall afford. I have heard of assassination by sword, by pistol, and by dagger; but here is a wretch who would dip the evangelists in blood—if he thinks he has not sworn his victim to death, he is ready to swear, without mercy and without end: but oh! do not, I conjure you, suffer him to take an oath; the arm of the murderer should not pollute the purity of the gospel; if he will swear, let it be on the *knife*, the proper symbol of his profession! Gentlemen, I am reminded of the tissue of abomination, with which this deadly calumniator, this O'Brien, has endeavoured to load so large a portion of your adult countrymen. He charges one hundred thousand Irishmen with the deliberate cruelty of depriving their fellow-creatures of

their eyes, tongues, and hands ! Do not believe the infamous slanderer ! If I were told that there was in Ireland one man who could so debase human nature, I should hesitate to believe that even O'Brien were he. I have heard the argument made use of, that, in cases of a very foul nature, witnesses cannot be found free from imputation ; this admitted in its fullest extent, it does not follow, that such evidence is to be accredited without other support. In such cases strong corroboration is necessary, and you would be the most helpless and unfortunate men in the world, if you were under the necessity of attending to the solitary testimony of such witnesses. In the present prosecution, two witnesses have been examined ; for the respectable character of Lord Portarlington must not be polluted by a combination with O'Brien : if his Lordship had told exactly the same story with O'Brien, it could not, however, be considered as corroborating O'Brien, who might as easily have uttered a falsehood to Lord Portarlington as he did here ; but how much more strongly must you feel yourselves bound to reject his evidence, when, appealing to his Lordship, he is materially contradicted, and his perjury established. With respect to Clark, he fixes no corroborative evidence whatever to the overt acts laid in the indictment. In endeavouring to slide in evidence of a conspiracy to murder Thompson, what might be the consequence, if such a vile insinuation took possession of your minds ?—I am not blinking the question, I come boldly up to it—there is not the most remote evidence to connect the fate of Thompson with the present case, and nothing could show the miserable paucity of his evidence, more than seeking to support it on what did not at all relate to the charge. Five witnesses, as if by the interference of Providence, have discredited O'Brien to as many facts.

What did the simple and honest evidence of John Clarke, of Blue-bell, amount to against O'Brien ? It attached the double crime of artifice and perjury, and added robbery to the personification. See now in Dublin, there are at this moment, thousands and ten thousands of your fellow-citizens, anxiously by, waiting to know if you will convict the Prisoner on the evidence of a wilful and corrupt perjurer ; whether they are, each in his turn, to feel the fatal effects of his condemnation ; or whether they are to find protection in the laws from the machinations of the *informer*. [Mr. Curran having been reminded to observe on the *recipe* for coining.] No ! (continued he), let him keep his *coining* for himself ; it

will not pass in common with other pieces—it suits him well, and is the proper emblem of his conscience, *copper washed*.

Would you let such a wretch as this into your house as a servant, under the impressions which his evidence must make on your minds? If you would not take his services in exchange for wages, will you take his perjury in exchange for the life of a fellow-creature? How will you feel, if the *assignats* of such evidence pass current for human blood! How will you bear the serrated and iron fangs of remorse gnawing at your hearts, if, in the moment of abandonment, you suffer the victim to be massacred even in our arms! But has his perjury stopped here? What said the innocent countryman, Patrick Cavanagh?—Pursuing the even tenor of his way, in the paths of honest industry, he is in the act of fulfilling the decree of his Maker, he is earning his bread by the sweat of his brow; when this villain, less pure than the arch-fiend who brought this sentence of laborious action on mankind, enters the habitation of peace and humble industry, and, not content with dipping his tongue in perjury and blood, robs the poor man of two guineas! Can you wonder that he crept into the hole of the multitude, when the Witness would have developed him? do you wonder that he endeavoured to shun your eyes? At this moment even the bold and daring villany of O'Brien stood abashed; he saw the eye of heaven in that of an innocent and injured man—perhaps the feeling was consummated by a glance from the dock—his heart bore testimony to his guilt, and he fled for the same! Gracious God! have you been so soiled in the vile intercourse, that you will give him a degree of credit, which you will deny to the candid and untainted evidence of so many honest men? But I have not done with him yet—while an atom of his vileness hangs together, I will separate it, lest you should chance to be taken by it. Was there a human creature brought forward to say he is any other than a villain? did his Counsel venture to ask our Witnesses, why they discredited him? did he dare to ask on what they established their assertions? No!—by this time it is probable Mr. O'Brien is sick of investigation. You find him coiling himself in the scaly circles of his cautious perjury, making anticipated battle against any one who should appear against him—but you see him sinking before the proof.

Do you feel, Gentlemen, that I have been wantonly aspersing this man's character? Is he not a perjurer, a swindler?—that he is not a murderer, will depend on you. He

assumes the character of a King's officer, to rob the King's people of their money; and afterwards, when their property fails him, he seeks to rob them of their lives! What say you to his habitual fellowship with baseness and fraud? He gives a recipe, instructing to felony, and counterfeiting the King's coin; and when questioned about it, what is his answer?—why truly, that it was “only a *light, easy* way of getting money—only a *little bit* of a *humbug*.” Good God! I ask you, has it ever come across you to meet with such a constellation of infamy?

Beside the perjury, Clark had nothing to say, scarcely ground to turn on. He swears he was not in the Court yesterday—what then? why he has only perjured himself!—well, call *Little Skirmish** up again?—why, it was but a *mistake*!—a little puzzled or so; and not being a *lawyer*, he could not tell whether he was in Court or not! Mr. Clark is a much better evidence than my Lord Portarlington—his Lordship, in the improvidence of truth, bore a single testimony; while Clark, wisely providing against contingencies, swore at both sides of the gutter—but the lesser perjurer is almost forgotten in the greater. No fewer than *five* perjuries are established against the *loyal* Mr. O'Brien, who has been “*united* to every *honest man*,”—if indicted on any one of these, I must tell you, Gentlemen, that he could not be sworn in a Court of Justice; on the testimony of five witnesses, on his own testimony, he stands indicted before you; and, Gentlemen, you must refuse him that credit, which is not to be squandered on baseness and profligacy. The present cause takes in the entire character of your country, which may suffer in the eyes of all Europe by your verdict. This is the first prosecution of the kind brought forward to view:—it is the great experiment of the Informers of Ireland, to ascertain how far they can carry on a traffic in human blood! This cannibal informer, this dæmon, O'Brien, greedy after human gore, has fifteen other victims in reserve, if, from your verdict, he receives the unhappy man at the bar! Fifteen more of your fellow-citizens are to be tried on his evidence! Be you then their saviours, let your verdict snatch them from his ravening maw, and interpose between yourselves and endless remorse!

I know, Gentlemen, I should but insult you, if I were to apologize to you for detaining you thus long; if I have apology to make to any person, it is to my client, for thus

* A character in the dramatic piece entitled “*The Deserter*.”

delaying his acquittal. Sweet is the recollection of having done justice, in that hour when the hand of death presses on the human heart. Sweet is the hope which it gives birth to! From you I demand that justice for my client—your innocent and unfortunate fellow-subject at the bar—and may you have for it a more lasting reward than the perishable crown we read of, which the ancients placed on the brow of him who saved in battle the life of a fellow-citizen.

If you should ever be assailed by the hand of the *informer*, may you find an all-powerful refuge in the example which you shall set this day; earnestly do I pray that you may never experience what it is to count the tedious hours in captivity, pining in the damps and gloom of the dungeon, while the wicked one is going about at large, seeking whom he may devour. There is another than a human tribunal, where the best of us will have occasion to look back on the little good we have done. In that awful trial, oh! may your verdict this day assure your hopes, and give you strength and consolation in the presence of an ADJUDGING GOD!

Mr. Finney was acquitted.

SPEECH

IN DEFENCE OF MR. PETER FINNERTY,

ON FRIDAY, DECEMBER 22, 1797.

Libel.

MR. PETER FINNERTY was charged upon an indictment, stating, “ That at a General Assizes and General Gaol delivery, holden at Carrickfergus, in and for the county of “ Antrim, on the 17th day of April, in the 37th year of the “ King, before the Honourable Mathias Finucane, one of the “ Judges of his Majesty’s Court of Common Pleas in Ireland, “ and the Honourable Denis George, one of the Barons of “ his Majesty’s Court of Exchequer in Ireland, Justices and “ Commissioners assigned to deliver the gaol of our said “ Lord the King, in and for the county of Antrim, of the “ several prisoners and malefactors therein, one William

" Orr, late of Farranshane, in said county of Antrim, yeoman,
 " was in lawful manner indicted for feloniously administering
 " a certain oath and engagement, upon a book, to one Hugh
 " Wheatly; which oath and engagement imported to bind
 " the said Hugh Wheatly, who then and there took the same,
 " to be of an association, brotherhood, and society, formed
 " for seditious purposes; and also for feloniously causing,
 " procuring, and inducing said Hugh Wheatly, to take an
 " oath of said import last mentioned; and also for feloniously
 " administering to said Hugh Wheatly another oath, import-
 " ing to bind said Hugh Wheatly not to inform or give
 " evidence against any brother, associate, or confederate, of a
 " certain society then and there formed; and also for
 " feloniously causing, procuring, and seducing, said Hugh
 " Wheatly, to take an oath of said import last mentioned.
 " And afterwards at Carrickfergus aforesaid, before the
 " Right Honourable Barry Lord Yelverton, Lord Chief Baron
 " of his Majesty's Court of Exchequer in Ireland, and the
 " Honourable Tankerville Chamberlaine, one of his Majesty's
 " Justices of his Court of Chief Pleas in Ireland, at a general
 " assizes, &c. on the sixteenth day of September, in the
 " thirty-seventh year of the King, said William Orr, by the
 " verdict of a certain Jury of said county of Antrim, between
 " our said Lord the King and said William Orr, taken of and
 " for the felony aforesaid in due manner, was tried, convicted,
 " and attainted, and for the same was duly executed: and
 " that he, the said Peter Finnerty, well knowing the premises,
 " but being a wicked and ill-disposed person, and of unquiet
 " conversation and disposition, and devising and intending
 " to molest and disturb the peace and public tranquillity of
 " this kingdom of Ireland; and to bring and draw the trial
 " aforesaid, and the verdict thereon, for our said Lord the
 " King, against this William Orr given, and the due course
 " of law in that behalf had, as aforesaid, into hatred, contempt,
 " and scandal, with all the liege subjects of our said Lord
 " the King, and to persuade, and cause the subjects of our
 " said Lord the King to believe that the trial aforesaid was
 " unduly had, and that the said William Orr did undeservedly
 " die in manner aforesaid; and that his Excellency John
 " Jefferys, Earl Camden, the Lord-Lieutenant of this kingdom,
 " after the conviction aforesaid, ought to have extended to
 " the said William Orr, his Majesty's gracious pardon of the
 " felonies aforesaid; and that in not so extending such
 " pardon, he, the said Lord-Lieutenant, had acted inhumanly,
 " wickedly, and unjustly, and in a manner unworthy of the

‘ trust which had been committed to him by our said Lord the
 “ King in that behalf; and that the said Lord-Lieutenant,
 “ in his government of this kingdom, had acted unjustly,
 “ cruelly, and oppressively, to his Majesty’s subjects therein:
 “ And the said Peter Finnerty, to fulfil and bring to effect
 “ his most wicked and detestable devices and intentions
 “ aforesaid, on the 26th of October, in the 37th year of the
 “ King, at Mountrath Street aforesaid, city of Dublin afore-
 “ said, falsely, wickedly, maliciously, and seditiously, did
 “ print and publish, and cause and procure to be printed
 “ and published, in a certain newspaper, entitled ‘ *The*
 “ *Press,*’ a certain false, wicked, malicious, and seditious
 “ libel, of and concerning the said trial, conviction, attainder,
 “ and execution of the said William Orr, as aforesaid, and of
 “ and concerning the said Lord-Lieutenant and his govern-
 “ ment of this kingdom, and his Majesty’s Ministers em-
 “ ployed by him in his government of this kingdom, accord-
 “ ing to the tenor and effect following, to wit:—

“ ‘ *The death of Mr. Orr* (meaning the said execution of the said
 “ William Orr) *the nation has pronounced one of the most sanguinary*
 “ *and savage acts that had disgraced the laws. In perjury, did you*
 “ *not hear, my Lord* (meaning the said Lord-Lieutenant), *the verdict*
 “ *(meaning the verdict aforesaid) was given? Perjury accompanied*
 “ *with terror, as terror has marked every step of your government*
 “ *(meaning the government of this kingdom aforesaid, by the said*
 “ *Lord-Lieutenant). Vengeance and desolation were to fall on those*
 “ *who would not plunge themselves in blood. These were not strong*
 “ *enough: against the express law of the land, not only was drink in-*
 “ *troduced to the Jury* (meaning the Jury aforesaid), *but drunkenness*
 “ *itself, beastly and criminal drunkenness, was employed to procure the*
 “ *murder of a better man* (meaning the said execution of the said
 “ William Orr) *than any that now surrounds you* (meaning the said
 “ Lord-Lieutenant).’

“ And in another part thereof, according to tenor and effect
 “ following to wit:—

“ ‘ *Repentance, which is a slow virtue, hastened however to declare the*
 “ *innocence of the victim* (meaning the said William Orr); *the mis-*
 “ *chief* (meaning the said conviction of the said William Orr) *which*
 “ *perjury had done, truth now stept forward to repair. Neither was*
 “ *she too late, had humanity formed any part of your counsels* (mean-
 “ ing the counsels of the said Lord-Lieutenant). *Stung with re-*
 “ *morse, on the return of reason, part of his Jury* (meaning the Jury
 “ aforesaid) *solemnly and soberly made oath that their verdict* (meaning
 “ the verdict aforesaid) *had been given under the unhappy influence of*
 “ *intimidation and drink; and in the most serious affidavit that ever*
 “ *was made, by acknowledging their crime, endeavoured to atone to*

“ God and to their country, for the sin into which they had been
“ seduced.”

“ And in another part thereof, according to the tenor and
“ effect following, to wit:—

“ ‘ And though the innocence of the accused (meaning the said William
“ Orr) had even remained doubtful, it was your duty (meaning the
“ duty of the said Lord-Lieutenant), my Lord, and you (meaning the
“ said Lord-Lieutenant), had no exemption from that duty, to have in-
“ terposed your arm, and saved him (meaning the said William Orr)
“ from the death (meaning the execution aforesaid) that perjury,
“ drunkenness, and reward, had prepared for him (meaning the said
“ William Orr). Let not the nation be told that you (meaning the
“ Lord-Lieutenant) are a passive instrument in the hands of others;
“ if passive you be, then is your office a shadow indeed. If an active
“ instrument as you ought to be, you (meaning the said Lord-Lieute-
“ nant) did not perform the duty which the laws required of you; you
“ (meaning the said Lord-Lieutenant) did not exercise the preroga-
“ tire of mercy; that mercy which the constitution had entrusted to you
“ (meaning the said Lord-Lieutenant) for the safety of the subject,
“ by guarding him from the oppression of wicked men. Innocent it
“ appears he (meaning the said William Orr) was; his blood (meaning
“ the blood of the said William Orr) has been shed, and the precedent
“ indeed is awful.’

“ And in another part thereof, according to the tenor and
“ effect following, to wit:—

“ ‘ But suppose the evidence of Wheatly had been true, what was
“ the offence of Mr. Orr (meaning the said William Orr)? Not that
“ he had taken an oath of blood and extermination—for then he had
“ not suffered; but that he (meaning the said William Orr) had taken
“ an oath of charity and of union, of humanity and of peace, he (mean-
“ ing the said William Orr) has suffered. Shall we then be told that
“ your government (meaning the government of this kingdom afore-
“ said, by the said Lord-Lieutenant) will conciliate public opinion, or
“ that the people will not continue to look for a better?’

“ And in another part thereof, according to the tenor and
“ effect following, that is to say:—

“ ‘ Is it to be wondered that a successor of Lord Fitzwilliam should
“ sign the death-warrant of Mr. Orr (meaning the said William Orr)?
“ Mr. Pitt had learned that a merciful Lord-Lieutenant was unsuited to
“ a government of violence. It was no compliment to the native cle-
“ mency of a Camden, that he sent you (meaning the said Lord-Lieu-
“ tenant) into Ireland—and what has been our portion under the
“ change, but massacre and rape, military murders, desolation and
“ terror.’

“ And in another part thereof, according to the tenor and
“ effect here following, that is to say:—

“ ‘ Feasting in your castle, in the midst of your myrmidons and bishops,
 “ you (meaning the said Lord-Lieutenant) have little concerned your-
 “ self about the expelled and miserable cottager, whose dwelling, at the
 “ moment of your mirth, was in flames, his wife and his daughter then
 “ under the violation of some commissioned ravager, his son agonizing on
 “ the bayonet, and his helpless infants crying in vain for mercy. These
 “ are lamentations which stain not the house of carousal. Under intoxi-
 “ cated counsels (meaning the counsels of the said Lord-Lieutenant),
 “ the constitution has reeled to its centre, justice is not only blind drunk,
 “ but deaf, like Festus, to the words of soberness and truth.’ ”

“ And in another part thereof, according to the tenor and effect here following, to wit:—

“ ‘ Let however the awful execution of Mr. Orr (meaning the execu-
 “ tion aforesaid of the said William Orr) be a lesson to all unthinking
 “ Juries, and let them cease to flatter themselves that the soberest recom-
 “ mendation of theirs, and of the presiding Judge, can stop the course
 “ of carnage, which sanguinary, and I do not fear to say, unconstitu-
 “ tional laws, have ordered to be loosed. Let them remember, that,
 “ like Macbeth, the servants of the Crown have waded so far in blood,
 “ that they find it easier to go on than to go back.’ ”

“ In contempt, &c. and against the peace, &c.”

[Other counts varied the charges; and the evidence for the prosecution being gone through, some witnesses for the Traverser, who were examined to prove the truth of the facts stated in the publication, were stopped in their examination by the Court.]

Mr. Curran said:—

Never did I feel myself so sunk under the importance of any cause; to speak to a question of this kind, at any time, would require the greatest talent and the most matured deliberation; but to be obliged, without either of those advantages, to speak to a subject that hath so deeply shaken the feelings of this already irritated and agitated nation, is a task that fills me with embarrassment and dismay.

Neither my learned colleague nor myself received any instruction or license until after the Jury were actually sworn, and we both of us came here under an idea that we should not take any part in the trial. This circumstance I mention, not as an idle apology for an effort that cannot be the subject of either praise or censure, but as a call upon you, Gentlemen of the Jury, to supply the defects of my efforts, by a double exertion of your attention.

Perhaps I ought to regret that I cannot begin with any compliment, that may recommend me or my client personally to your favour. A more artful advocate would probably begin his address to you by compliments on your patriotism,

and by felicitating his client upon the happy selection of his Jury, and upon that unsuspected impartiality in which, if he was innocent, he must be safe. You must be conscious, Gentlemen, that such idle verbiage as that could not convey either my sentiments or my client's upon that subject. You know, and we know, upon what occasion you are come, and by whom you have been chosen; you are come to try an accusation professedly brought forward by the state, chosen by a Sheriff who is appointed by our accuser.

[The Attorney-General, interrupting Mr. Curran, said, the Sheriff was elected by the city, and that the observation was therefore unfounded.]

Be it so (continued Mr. Curran): I will not now stop to inquire whose property the city may be considered to be; but the learned Gentleman seems to forget, that the election by that city, to whomsoever it may belong, is absolutely void without the approbation of that very Lord-Lieutenant, who is the prosecutor in this case. I do therefore repeat, Gentlemen, that not a man of you has been called to that box by the voice of my client; that he has had no power to object to a single man among you, though the Crown has: and that you yourselves must feel under what influence you are chosen, or for what qualifications you are particularly selected. At a moment when this wretched land is shaken to its centre by the dreadful conflicts of the different branches of the community; between those who call themselves the partizans of liberty, and those that call themselves the partizans of power; between the advocates of infliction, and the advocates of suffering; upon such a question as the present, and at such a season, can any man be at a loss to guess from what class of character and opinion a friend to either party would resort for that Jury, which was to decide between both? I trust, Gentlemen, you know me too well to suppose that I could be capable of treating you with any personal disrespect; I am speaking to you in the honest confidence of your fellow-citizen. When I allude to those unworthy imputations of supposed bias, or passion, or partiality, that may have marked you out for your present situation, I do so in order to warn you of the ground on which you stand, of the point of awful responsibility in which you are placed, to your conscience, and to your country; and to remind you, that if you have been put into that box from any unworthy reliance on your complaisance or your servility, you have it in your power, before you leave it, to refute and to punish so vile an expectation, by the integrity of your verdict; to re-

mind you that you have it in your power to show to as many Irishmen as yet linger in this country, that all law and justice have not taken their flight with our prosperity and peace; that the sanctity of an oath, and the honesty of a Juror, are not yet dead amongst us; and that if our Courts of Justice are superceded by so many strange and terrible tribunals, it is not because they are deficient either in wisdom or virtue.

Gentlemen, it is necessary that you should have a clear idea, first, of the law by which this question is to be decided; secondly, of the nature and object of the prosecution. As to the first, it is my duty to inform you that the law respecting libels has been much changed of late.—Heretofore, in consequence of some decisions of the Judges in Westminster-hall, the Jury was conceived to have no province but that of finding the truth of the innuendos, and the fact of publication; but the libellous nature of that publication, as well as the guilt or innocence of the publication, were considered as exclusively belonging to the Court. In a system like that of law, which reasons logically, no one erroneous principle can be introduced, without producing every other that can be deducible from it. If in the premises of any argument you admit one erroneous proposition, nothing but bad reasoning can save the conclusion from falsehood. So it has been with this encroachment of the Court upon the province of the Jury with respect to libels. The moment the Court assumed as a principle that they, the Court, were to decide upon every thing but the publication; that is, that they were to decide upon the question of libel or no libel, and upon the guilt or innocence of the intention, which must form the essence of every crime; the guilt or innocence must of necessity have ceased to be material. You see, Gentlemen, clearly, that the question of intention is a mere question of fact. Now the moment the Court determined that the Jury was not to try that question, it followed of necessity that it was not to be tried at all; for the Court cannot try a question of fact. When the Court said that it was not triable, there was no way of fortifying that extraordinary proposition, except by asserting that it was not material. The same erroneous reasoning carried them another step, still more mischievous and unjust: if the intention had been material, it must have been decided upon as a mere fact, under all its circumstances. Of these circumstances, the meanest understanding can see that the leading one must be the truth or the falsehood of the publication;

but having decided the intention to be immaterial, it followed that the truth must be equally immaterial—and under the law so distorted, any man in England who published the most undeniable truth, and with the purest intention, might be punished for a crime in the most ignominious manner, without imposing on the Prosecutor the necessity of proving his guilt, or getting any opportunity of showing his innocence. I am not in the habit of speaking of legal institutions with disrespect; but I am warranted in condemning that usurpation upon the right of Juries, by the authority of that statute, by which your jurisdiction is restored. For that restitution of justice, the British subject is indebted to the splendid exertions of Mr. Fox and Mr. Erskine—those distinguished supporters of the constitution and of the law; and I am happy to say to you, that though we can claim no share in the glory they have so justly acquired, we have the full benefit of their success; for you are now sitting under a similar act passed in this country, which makes it your duty and right to decide upon the entire question upon the broadest grounds, and under all its circumstances, and of course to determine, by your verdict, whether this publication be a false and scandalous libel; false in fact, and published with the seditious purpose alleged, of bringing the Government into scandal, and instigating the people to insurrection.

Having stated to you, Gentlemen, the great and exclusive extent of your jurisdiction, I shall beg leave to suggest to you a distinction that will strike you at first sight; and that is, the distinction between public animadversions upon the character of private individuals, and those which are written upon measures of Government, and the persons who conduct them. The former may be called personal, and the latter political publications. No two things can be more different in their nature, nor in the point of view in which they are to be looked on by a Jury. The criminality of a mere personal libel consists in this, that it tends to a breach of the peace; it tends to all the vindictive paroxysms of exasperated vanity, or to the deeper or more deadly vengeance of irritated pride.—The truth is, few men see at once that they cannot be hurt so much as they think by the mere battery of a newspaper. They do not reflect that every character has a natural station, from which it cannot be effectually degraded, and beyond which it cannot be raised by the bawling of a news-hawker. If it is wantonly aspersed, it is but for a season, and that a short one, when it emerges

like the moon from a passing cloud to its original brightness. It is right, however, that the law, and that you, should hold the strictest hand over this kind of public animadversion, that forces humility and innocence from their retreat into the glare of public view; that wounds and terrifies; that destroys the cordiality and the peace of domestic life; and that without eradicating a single vice, or single folly, plants a thousand thorns in the human heart.

In cases of that kind, I perfectly agree with the law, as stated from the bench; in such cases, I hesitate not to think, that the truth of a charge ought not to justify its publication. If a private man is charged with a crime, he ought to be prosecuted in a Court of Justice, where he may be punished if it is true, and the accuser if it is false; but far differently do I deem of the freedom of political publication. The salutary restraint of the former species, which I talked of, is found in the general law of all societies whatever; but the more enlarged freedom of the press, for which I contend in political publication, I conceive to be founded in the peculiar nature of the British constitution, and to follow directly from the contract on which the British government hath been placed by the Revolution. By the British constitution, the power of the state is a trust, committed by the people, upon certain conditions: by the violation of which, it may be abdicated by those who hold, and resumed by those who conferred it. The real security therefore of the British sceptre, is the sentiment and opinion of the people, and it is consequently their duty to observe the conduct of the government; and it is the privilege of every man to give them full and just information upon that important subject. Hence the liberty of the press is inseparably twined with the liberty of the people. The press is the great public monitor: its duty is that of the historian and the witness, that "*nil falsi audeat, nil veri non audeat dicere*;" that its horizon shall extend to the farthest verge and limit of truth; that it shall speak truth to the King in the hearing of the people, and to the people in the hearing of the King; that it shall not perplex either the one or the other with false alarm, lest it lose its characteristic veracity, and become an unheeded warner of real danger; lest it should vainly warn them of that sin, of which the inevitable consequence is death. This, Gentlemen, is the great privilege upon which you are to decide; and I have detained you the longer, because of the late change of the law, and because of some observations that have been made, which I shall

find it necessary to compare with the principles I have now laid down.

And now, Gentlemen, let us come to the immediate subject of the trial, as it is brought before you, by the charge in the indictment, to which it ought to have been confined; and also, as it is presented to you by the statement of the learned Counsel, who has taken a much wider range than the mere limits of the accusation, and has endeavoured to force upon your consideration extraneous and irrelevant facts, for reasons which it is not my duty to explain. The indictment states simply, that Mr. Finnerty has published a false and scandalous libel upon the Lord-Lieutenant of Ireland, tending to bring his government into disrepute, and to alienate the affections of the people; and one would have expected, that, without stating any other matter, the Counsel for the Crown would have gone directly to the proof of this allegation: but he has not done so; he has gone to a most extraordinary length, indeed, of preliminary observation, and an allusion to facts, and sometimes an assertion of facts, at which I own I was astonished, until I saw the drift of these allusions and assertions. Whether you have been fairly dealt with by him, or are now honestly dealt with by me, you must be judges. He has been pleased to say, that this prosecution is brought against this letter signed Marcus, merely as a part of what he calls a system of attack upon the government, by the paper called the PRESS. As to this, I will only ask you whether you are fairly dealt with? Whether it is fair treatment to men upon their oaths, to insinuate to them, that the general character of a newspaper (and that general character founded merely upon the assertion of the Prosecutor), is to have any influence upon their minds, when they are to judge of a particular publication? I will only ask you, what men you must be supposed to be, when it is thought that even in a Court of Justice, and with the eyes of the nation upon you, you can be the dupes of that trite and exploded expedient, so scandalous of late in this country, of raising a vulgar and mercenary cry against whatever man, or whatever principle, it is thought necessary to put down; and I shall therefore merely leave it to your own pride to suggest upon what foundation it could be hoped, that a senseless clamour of that kind could be echoed back by the yell of a Jury upon their oaths. I trust you see that this is nothing to do with the question.

Gentlemen of the Jury, other matters have been mentioned, which I must repeat for the same purpose; that of showing

you that they have nothing to do with the question. The learned Counsel has been pleased to say, that he comes forward in this prosecution as the real advocate for the liberty of the press, and to protect a mild and a merciful government from its licentiousness; and he has been pleased to add, that the constitution can never be lost while its freedom remains, and that its licentiousness alone can destroy that freedom. As to that, Gentlemen, he might as well have said, that there is only one mortal disease of which a man can die; I can die the death inflicted by tyranny; and when he comes forward to extinguish this paper in the ruin of the printer, by a state prosecution, in order to prevent its dying of licentiousness, you must judge how candidly he is treating you, both in the fact and in the reasoning. Is it in Ireland, Gentlemen, that we are told licentiousness is the only disease that can be mortal to the press? Has he heard of nothing else that has been fatal to the freedom of publication? I know not whether the printer of the Northern Star may have heard of such things in his captivity, but I know that his wife and his children are well apprized that a press may be destroyed in the open day, not by its own licentiousness, but by the licentiousness of a military force. As to the sincerity of the declaration, that the state has prosecuted in order to assert the freedom of the press, it starts a train of thought, of melancholy retrospect and direful prospect, to which I did not think the learned Counsel would have wished to commit your minds. It leads you naturally to reflect at what times, from what motives, and with what consequences, the government has displayed its patriotism, by prosecutions of this sort. As to the motives, does history give you a single instance in which the state has been provoked to these conflicts, except by the fear of truth, and by the love of vengeance? Have you ever seen the rulers of any country bring forward a prosecution from motives of filial piety, for libels upon their departed ancestors? Do you read that Elizabeth directed any of those state prosecutions against the libels which the divines of her times had written against her Catholic sister, or against the other libels which the same gentlemen had written against her Protestant father? No, Gentlemen, we read of no such thing; but we know she did bring forward a prosecution from motives of personal resentment; and we know that a Jury was found time-serving and mean enough to give a verdict, which she was ashamed to carry into effect. I said the learned Counsel drew you back to the times that have been marked by these

miserable conflicts. I see you turn your thoughts to the reign of the second James. I see you turn your eyes to those pages of governmental abandonment, of popular degradation, of expiring liberty, of merciless and sanguinary persecution; to that miserable period, in which the fallen and abject state of man might have been almost an argument in the mouth of the atheist and the blasphemer, against the existence of an all-just and an all-wise First Cause; if the glorious era of the Revolution that followed it had not refuted the impious inference, by showing that if man descends, it is not in his own proper motion; that it is with labour and with pain; and that he can continue to sink only until, by the force and pressure of the descent, the spring of his immortal faculties acquires that recuperative energy and effort, that hurries him as many miles aloft—he sinks but to rise again. It is at that period that the state seeks for shelter in the destruction of the press; it is in a period like that, that the tyrant prepares for an attack upon the people, by destroying the liberty of the press; by taking away that shield of wisdom and of virtue, behind which the people are invulnerable; in whose pure and polished convex, ere the lifted blow has fallen, he beholds his own image, and is turned into stone. It is at those periods that the honest man dares not speak, because truth is too dreadful to be told; it is then humanity has no ears, because humanity has no tongue. It is then the proud man scorns to speak, but like a physician baffled by the wayward excesses of a dying patient, retires indignantly from the bed of an unhappy wretch, whose ear is too fastidious to bear the sound of wholesome advice, whose palate is too debauched to bear the salutary bitter of the medicine that might redeem him; and therefore leaves him to the felonious piety of the slaves that talk to him of life, and strip him before he is cold.

I do not care, Gentlemen, to exhaust too much of your attention, by following this subject through the last century with much minuteness; but the facts are too recent in your mind not to show you, that the liberty of the press and the liberty of the people sink and rise together; that the liberty of speaking and the liberty of acting have shared exactly the same fate. You must have observed in England, that their fate has been the same in the successive vicissitudes of their late depression; and sorry I am to add, that this country has exhibited a melancholy proof of their inseparable destiny, through the various and further stages of deterioration, down to the period of their final extinction.

when the constitution has given place to the sword, and the only printer in Ireland who dares to speak for the people, is now in the dock.

Gentlemen, the learned Counsel has made the real subject of this prosecution so small a part of his statement, and has led you into so wide a range, certainly as necessary to the object, as inapplicable to the subject of this prosecution, that I trust you will think me excusable in having somewhat followed his example. Glad am I to find that I have the authority of the same example for coming at last to the subject of this trial. I agree with the learned Counsel, that the charge made against the Lord-Lieutenant of Ireland is that of having grossly and inhumanly abused the royal prerogative of mercy, of which the King is only the trustee for the benefit of the people. The facts are not controverted. It has been asserted that their truth or falsehood is indifferent, and they are shortly these, as they appear in this publication.

William Orr was indicted for having administered the oath of a United Irishman. Every man now knows what that oath is: that it is simply an engagement, first, to promote a brotherhood of affection among men of all religious distinctions; secondly, to labour for the attainment of a parliamentary reform; and thirdly, an obligation of secrecy, which was added to it when the convention law made it criminal and punishable to meet by any public delegation for that purpose. After remaining upwards of a year in gaol, Mr. Orr was brought to his trial; was prosecuted by the state; was sworn against by a common informer of the name of Wheatly, who himself had taken the obligation, and was convicted under the insurrection act, which makes the administering such an obligation felony of death—the Jury recommended Mr. Orr to mercy; the Judge, with an humanity becoming his character, transmitted the recommendation to the noble Prosecutor in this case. Three of the Jurors made solemn affidavit in Court, that liquor had been conveyed into their box; that they were brutally threatened by some of their fellow-Jurors with capital prosecution if they did not find the Prisoner guilty; and that under the impression of those threats, and worn down by watching and intoxication, they had given a verdict of guilty against him, though they believed him in their conscience to be innocent. That further inquiries were made, which ended in a discovery of the infamous life and character of the informer; that a respite was therefore sent

once, and twice, and thrice, to give time, as Mr. Attorney-General has stated, for his Excellency to consider whether mercy *could* be extended to him or not; and that, with a knowledge of all these circumstances, his Excellency did finally determine that mercy should not be extended to him; and that he was accordingly executed upon that verdict. Of this publication, which the indictment charges to be false and seditious, Mr. Attorney-General is pleased to say, that the design of it is to bring the Courts of Justice into contempt. As to this point of fact, Gentlemen, I beg to set you right.

To the administration of justice, so far as it relates to the Judges, this publication has not even an allusion, in any part mentioned in this indictment; it relates to a department of justice, that cannot begin until the duty of the Judge closes. Sorry should I be, that, with respect to this unfortunate man, any censure should be flung on those Judges who presided at this trial, with the mildness and temper that became them upon so awful an occasion as the trial of life and death. Sure am I, that if they had been charged with inhumanity or injustice, and if they had condescended at all to prosecute the reviler, they would not have come forward in the face of the public to say, as has been said this day, that it was immaterial whether the charge was true or not. Sure I am, their first object would have been to show that it was false, and readily should I have been, an eye-witness of the fact, to have discharged the debt of ancient friendship, of private respect, and of public duty, and upon my oath to have repelled the falsehood of such an imputation. Upon this subject, Gentlemen, the presence of those venerable Judges restrains what I might otherwise have said, nor should I have named them at all, if I had not been forced to do so, and merely to undeceive you, if you have been made to believe their characters to have any community of cause whatever with the Lord-Lieutenant of Ireland. To him alone it is confined, and against him the charge is made, as strongly, I suppose, as the writer could find words to express it, that the Viceroy of Ireland has cruelly abused the prerogative of royal mercy, in suffering a man under such circumstances to perish like a common malefactor. For this Mr. Attorney-General calls for your conviction as a false and scandalous libel; and after stating himself every fact that I have repeated to you, either from his statement, or from the evidence, he tells you that you ought to find it false and scan-

dalous, though he almost in words admits that it is not false, and has resisted the admission of the evidence by which we offered to prove every word of it to be true.

And here, Gentlemen, give me leave to remind you of the parties before you. The traverser is a printer, who follows that profession for bread, and who at a time of great public misery and terror, when the people are restrained by law from debating under any delegated form; when the few constituents that we have are prevented by force from meeting in their own persons, to deliberate or to petition; when every other newspaper in Ireland is put down by force, or purchased by the administration (though here, Gentlemen, perhaps I ought to beg your pardon for stating without authority—I recollect when we attempted to examine as to the number of newspapers in the pay of the Castle, that the evidence was objected to); at a season like this, Mr. Finnerty has had the courage, perhaps the folly, to print the publication in question, from no motive under heaven of malice or vengeance, but in the mere duty which he owes to his family, and to the public. His Prosecutor is the King's Minister in Ireland; in that character does the learned Gentleman mean to say, that his conduct is not a fair subject of public observation? where does he find his authority for that in the law or practice of the sister country? have the virtues, or the exalted station, or the general love of his people preserved the sacred person even of the royal master of the prosecutor, from the asperity and intemperance of public censure, unfounded as it ever must be, with any personal respect to his Majesty, in justice or truth? have the gigantic abilities of Mr. Pitt—have the more gigantic talents of his great antagonist, Mr. Fox, protected either of them from the insolent familiarity, and for aught we know, the injustice with which writers have treated them? What latitude of invective has the King's Minister escaped upon the subject of the present war? Is there an epithet of contumely, or of reproach, that hatred or that fancy could suggest, that is not publicly lavished upon them? Do you not find the words, advocate of despotism, robber of the public treasure, murderer of the King's subjects, debaucher of the public morality, degrader of the constitution, tarnisher of the British empire, by frequency of use lose all meaning whatsoever, and dwindle into terms, not of any peculiar reproach, but of ordinary appellation? And why, Gentlemen, is this permitted in that country? I'll tell you why;—because in that country they are yet wise enough to see,

that the measures of the state are the proper subject for the freedom of the press; that the principles relating to personal slander do not apply to rulers or to ministers; that to publish an attack upon a public minister, without any regard to truth, but merely because of its tendency to a breach of the peace, would be ridiculous in the extreme. What breach of the peace, Gentlemen, I pray you, in such a case? Is it the tendency of such publications to provoke Mr. Pitt or Mr. Dundas to break the head of the writer, if they should happen to meet him? No, Gentlemen; in that country this freedom is exercised, because the people feel it to be their right; and it is wisely suffered to pass by the state, from a consciousness that it would be vain to oppose it; a consciousness confirmed by the event of every incautious experiment. It is suffered to pass from a conviction, that, in a Court of Justice at least, the bulwarks of the constitution will not be surrendered to the state; and that the intended victim, whether clothed in the humble guise of honest industry, or decked in the honours of genius, and virtue, and philosophy, whether a Hardy or a Tooke, will find certain protection in the honesty and spirit of an English Jury.

But, Gentlemen, I suppose Mr. Attorney-General will scarcely wish to carry his doctrine altogether so far. Indeed, I remember, he declared himself a most zealous advocate for the liberty of the press. I may, therefore, even according to him, presume to make some observations on the conduct of the existing government. I should wish to know how far he supposes it to extend; is it to the composition of lampoons and madrigals, to be sung down the grates by ragged ballad-mongers to kitchen-maids and footmen? I will not suppose that he means to confine it to the ebullitions of Billingsgate, to those cataracts of ribaldry and scurrility, that are daily spouting upon the miseries of our wretched fellow-sufferers, and the unavailing efforts of those who have vainly laboured in their cause. I will not suppose that he confines it to the poetic license of a birth-day ode—the *Laureat* would not use such language! In which case I do not entirely agree with him, that the truth or the falsehood is as perfectly immaterial to the law, as it is to the *Laureat*; as perfectly unrestrained by the law of the land, as it is by any law of decency or shame, of modesty or decorum. But as to the privilege of censure or blame, I am sorry that the learned gentleman has not favoured you with his notion of the liberty of the press. Suppose an Irish Viceroy acts a very little absurdly—may the press venture to be respect-

fully comical upon that absurdity? The learned Counsel does not, at least in terms, give a negative to that. But let me treat you honestly, and go further, to a more material point; suppose an Irish Viceroy does an act that brings scandal upon his master—that fills the mind of a reasonable man with the fear of approaching despotism; that leaves no hope to the people of preserving themselves and their children from chains, but in common confederacy for common safety. What is that honest man in that case to do? I am sorry *the right honourable advocate for the liberty of the press* has not told you his opinion, at least in any express words. I will therefore venture to give you my far humbler thought upon the subject. I think an honest man ought to tell the people frankly and boldly of their peril; and I must say I can imagine no villany greater than that of his holding a traitorous silence at such a crisis, except the villany and baseness of prosecuting him, or of finding him guilty for such an honest discharge of his public duty. And I found myself on the known principle of the Revolution of England, namely, that the crown itself may be abdicated by certain abuses of the trust reposed; and that there are possible excesses of arbitrary power, which is not only the right, but the bounden duty of every honest man to resist, at the risk of his fortune and his life. Now, Gentlemen, if this reasoning be admitted, and it cannot be denied; if there be any possible event in which the people are obliged to look only to themselves, and are justified in doing so; can you be so absurd as to say, that it is lawful to the people to act upon it when it unfortunately does arrive, but that it is criminal in any man to tell them that the miserable event has actually arrived, or is imminently approaching? Far am I, Gentlemen, from insinuating that (extreme as it is) our misery has been matured into any deplorable crisis of this kind, from which I pray that the almighty God may for ever preserve us! But I am putting my principles upon the strongest ground, and most favourable to my opponents, namely, that it never can be criminal to say any thing of the government but what is false; and I put this in the extreme, in order to demonstrate to you, *à fortiori*, that the privilege of speaking truth to the people, which holds in the last extremity, must also obtain in every stage of inferior importance; and that, however a Court may have decided, before the late act, that the truth was immaterial in case of libel; since that act, no honest Jury can be governed by such a principle.

Be pleased now, Gentlemen, to consider the grounds upon

which this publication is called a libel, and criminal. Mr. Attorney-General tells you it tends to excite sedition and insurrection. Let me again remind you, that the truth of this charge is not denied by the noble Prosecutor. What is it then that tends to excite sedition and insurrection—"The act that is charged upon the Prosecutor, and is not attempted to be denied?" And, gracious God! Gentlemen of the Jury, is the public statement of the King's representative this—"I have done a deed that must fill the mind of every feeling or thinking man with horror and indignation; that must alienate every man that knows it from the King's government, and endanger the separation of this distracted empire: the Traverser has had the guilt of publishing this fact, which I myself acknowledge, and I pray you to find him guilty?" Is this the case which the Lord-Lieutenant of Ireland brings forward? Is this the principle for which he ventures, at a dreadful crisis like the present, to contend in a Court of Justice? Is this the picture which he wishes to hold out of himself to the justice and humanity of his own countrymen? Is this the history which he wishes to be read by the poor Irishmen of the south and of the north, by the sister nation, and the common enemy?

With the profoundest respect, permit me humbly to defend his Excellency, even against his own opinion. The guilt of this publication he is pleased to think consists in this, that it tends to insurrection. Upon what can such a fear be supported? After the multitudes that have perished in this unhappy nation, within the last three years—unhappiness which has been borne with a patience not paralleled in the history of nations—can any man suppose that the fate of a single individual could lead to resistance or insurrection? But suppose that it might—what ought to be the conduct of an honest man? Should it not be to apprize the government and the country of the approaching danger? Should it not be to say to the Viceroy, you will drive the people to madness, if you persevere in such bloody councils; you will alienate the Irish nation; you will distract the common force; and you will invite the common enemy? Should not an honest man say to the people, the measure of your affliction is great, but you need not resort for remedy to any desperate expedients? If the King's Minister is defective in humanity or wisdom, his royal master, and your beloved sovereign, is abounding in both. At such a moment, can you be so senseless as not to feel, that any one of you ought to hold such language; or is it possible you could be so infatu-

ated, as to punish the man who was honest enough to hold it? Or is it possible that you could bring yourselves to say to your country, that at such a season the press ought to sleep upon its post, or to act like the perfidious watchman on his round, that sees the villain wrenching the door, or the flames bursting from the windows, while the inhabitant is wrapt in sleep, and cries out that "'tis past five o'clock, the morning is fair, and all well?"

On this part of the case I shall only put one question to you. I do not affect to say it is similar in all its points; I do not affect to compare the humble fortunes of Mr. Orr with the sainted names of Russel or Sidney; still less am I willing to find any likeness between the present period and the year 1683. But I will put a question to you, completely parallel in principle. When that unhappy and misguided monarch had shed the sacred blood, which their noble hearts had matured into a fit cement of revolution, if any honest Englishman had been brought to trial for daring to proclaim to the world his abhorrence of such a deed, what would you have thought of the English Jury that could have said, we know in our hearts what he said was true and honest, but we will say upon our oaths, that it was false and criminal; and we will, by that base subserviency, add another item to the catalogue of public wrongs, and another argument for the necessity of an appeal to heaven for redress?

Gentlemen, I am perfectly aware that what I say may be easily misconstrued; but if you listen to me with the same fairness that I address you, I cannot be misunderstood. When I show you the full extent of your political rights and remedies; when I answer those slanderers of British liberty, who degrade the monarch into a despot, who pervert the steadfastness of law into the waywardness of will; when I show you the inestimable stores of political wealth, so dearly acquired by our ancestors, and so solemnly bequeathed; and when I show you how much of that precious inheritance has yet survived all the prodigality of their posterity; I am far from saying that I stand in need of it all upon the present occasion. No, Gentlemen, far am I indeed from such a sentiment. No man more deeply than myself deplores the present melancholy state of our unhappy country. Neither does any man more fervently wish for the return of peace and tranquillity, through the natural channels of mercy and of justice. I have seen too much of force and of violence to hope much good from the continuance of them on one side, or retaliation from another. I have of late

seen too much of political rebuilding, not to have observed, that to demolish is not the shortest way to repair. It is with pain and anguish that I should search for the miserable right of breaking ancient ties, or going in quest of new relations, or untried adventures. No, Gentlemen; the case of my client rests not upon these sad privileges of despair. I trust, that as to the fact, namely, the intention of exciting insurrection, you must see it cannot be found in this publication; that it is the mere idle, unsupported imputation of malice, or panic, or falsehood. And that as to the law, so far has he been from transgressing the limits of the constitution, that whole regions lie between him and those limits, which he has not trod, and which I pray to heaven it may never be necessary for any of us to tread.

Gentlemen, Mr. Attorney-General has been pleased to open another battery upon this publication, which I do trust I shall silence, unless I flatter myself too much in supposing that hitherto my resistance has not been utterly unsuccessful. He abuses it for the foul and insolent familiarity of its address. I do clearly understand his idea; he considers the freedom of the press to be the license of offering that paltry adulation which no man ought to stoop to utter or to hear; he supposes the freedom of the press ought to be like the freedom of a king's jester, who, instead of reproofing the faults of which majesty ought to be ashamed, is base and cunning enough, under the mask of servile and adulatory censure, to stroke down and pamper those vices of which it is foolish enough to be vain. He would not have the press presume to tell the Viceroy, that the prerogative of mercy is a trust for the benefit of the subject, and not a gaudy feather stuck into the diadem to shake in the wind, and by the waving of the gorgeous plumage to amuse the vanity of the wearer. He would not have it to say to him, that the discretion of the Crown as to mercy, is like the discretion of a Court of Justice as to law; and that in the one case as well as the other, wherever the propriety of the exercise of it appears, it is equally a matter of right. He would have the press all fierceness to the people, and all sycophancy to power; he would have it consider the mad and phrenetic depopulations of authority like the awful and inscrutable dispensations of Providence, and say to the unfeeling and despotic spoiler, in the blasphemed and insulted language of religious resignation—"the Lord hath given, and the Lord hath taken away, blessed be the name of the Lord!!" But let me condense the generality of the learned gentle-

man's invective into questions that you can conceive. Does he mean that the air of this publication is rustic and uncourtly? Does he mean, that when Marcus presumed to ascend the steps of the Castle, and to address the Viceroy, he did not turn out his toes as he ought to have done? But, Gentlemen, you are not a Jury of dancing-masters:—or does the learned gentleman mean that the language is coarse and vulgar? If this be his complaint, my client has but a poor advocate. I do not pretend to be a mighty grammarian, or a formidable critic; but I would beg leave to suggest to you, in serious humility, that a free press can be supported only by the ardour of men who feel the prompting sting of real or supposed capacity; who write from the enthusiasm of virtue, or the ambition of praise; and over whom, if you exercise the rigour of a grammatical censorship, you will inspire them with as mean an opinion of your integrity as of your wisdom, and inevitably drive them from their post;—and if you do, rely upon it, you will reduce the spirit of publication, and with it the press of this country, to what it for a long interval has been—the register of births, and fairs, and funerals, and the general abuse of the people and their friends.

But, Gentlemen, in order to bring this charge of insolence and vulgarity to the test, let me ask you, whether you know of any language which could have adequately described the idea of mercy denied, where it ought to have been granted; or of any phrase vigorous enough to convey the indignation which an honest man would have felt upon such a subject? Let me beg of you for a moment to suppose that any one of you had been the writer of this very severe expostulation with the Viceroy, and that you had been the witness of the whole progress of this never-to-be-forgotten catastrophe. Let me suppose that you had known the charge upon which Mr. Orr was apprehended, the charge of abjuring that bigotry which had torn and disgraced his country; of pledging himself to restore the people of his country to their place in the constitution; and of binding himself never to be the betrayer of his fellow-labourers in that enterprize: that you had seen him upon that charge removed from his industry, and confined in a gaol; that through the slow and lingering progress of twelve tedious months you had seen him confined in a dungeon, shut out from the common use of air and of his own limbs; that day after day you had marked the unhappy captive cheered by no sound but the cries of his family, or the clinking of chains; that you had

seen him at last brought to his trial; that you had seen the vile and perjured informer deposing against his life; that you had seen the drunken, and worn-out, and terrified Jury give in a verdict of death; that you had seen the same Jury, when their returning sobriety had brought back their conscience, prostrate themselves before the humanity of the bench, and pray that the mercy of the Crown might save their characters from the reproach of an involuntary crime, their consciences from the torture of eternal self-condemnation, and their souls from the indelible stain of innocent blood. Let me suppose that you had seen the respite given, and that contrite and honest recommendation transmitted to that seat where mercy was presumed to dwell; that new and before unheard of crimes are discovered against the informer; that the royal mercy seems to relent, and that a new respite is sent to the Prisoner; that time is taken, as the learned Counsel for the Crown has expressed it, to see whether mercy could be extended or not! that after that period of lingering deliberation passed, a third respite is transmitted; that the unhappy captive himself feels the cheering hope of being restored to a family that he had adored, to a character that he had never stained, and to a country that he had ever loved; that you had seen his wife and children upon their knees, giving those tears to gratitude, which their locked and frozen hearts could not give to anguish and despair, and imploring the blessings of eternal Providence upon his head, who had graciously spared the father, and restored him to his children; that you had seen the olive branch sent into his little ark, but no sign that the waters had subsided. "Alas! nor wife, nor children more shall he behold, nor friends, nor sacred home!" No seraph mercy unbars his dungeon, and leads him forth to light and life; but the minister of death hurries him to the scene of suffering and of shame; where, unmoved by the hostile array of artillery and armed men collected together, to secure, or to insult, or to disturb him, he dies with a solemn declaration of his innocence, and utters his last breath in a prayer for the liberty of his country. Let me now ask you, if any of you had addressed the public ear upon so foul and monstrous a subject, in what language would you have conveyed the feelings of horror and indignation?—would you have stooped to the meanness of qualified complaint?—would you have been mean enough?—but I entreat your forgiveness—I do not think meanly of you; had I thought so meanly of you, I could not suffer my

mind to commune with you as it has done; had I thought you that base and vile instrument, attuned by hope and by fear into discord and falsehood, from whose vulgar string no groan of suffering could vibrate, no voice of integrity or honour could speak, let me honestly tell you, I should have scorned to fling my hand across it; I should have left it to a fitter minstrel: if I do not therefore grossly err in my opinion of you, I could use no language upon such a subject as this, that must not lag behind the rapidity of your feelings, and that would not disgrace those feelings, if it attempted to describe them.

Gentlemen, I am not unconscious that the learned Counsel for the Crown seemed to address you with a confidence of a very different kind; he seemed to expect from you a kind and respectful sympathy with the feelings of the Castle, and with the griefs of chided authority. Perhaps, Gentlemen, he may know you better than I do; if he does, he has spoken to you as he ought; he has been right in telling you, that if the reprobation of this writer is weak, it is because his genius could not make it stronger; he has been right in telling you that his language has not been braided and festooned as elegantly as it might; that he has not pinched the miserable plaits of his phraseology, nor placed his patches and feathers with that correctness of millinery which became so exalted a person. If you agree with him, Gentlemen of the Jury; if you think that the man, who ventures at the hazard of his own life to rescue from the deep the drowned honour of his country, must not presume upon the guilty familiarity of plucking it up by the locks, I have no more to say; do a courteous thing. Upright and honest Jurors, find a civil and obliging verdict against the printer! And when you have done so, march through the ranks of your fellow-citizens to your own homes, and bear their looks as they pass along; retire to the bosom of your families and your children, and when you are presiding over the morality of the parental board, tell those infants, who are to be the future men of Ireland, the history of this day. Form their young minds by your precepts, and confirm those precepts by your own example; teach them how discreetly allegiance may be perjured on the table, or loyalty be foresworn in the jury-box: and when you have done so, tell them the story of Orr; tell them of his captivity, of his children, of his crime, of his hopes, of his disappointments, of his courage, and of his death; and when you find your little hearers hanging from your lips, when you see their eyes overflow with sympathy

and sorrow, and their young hearts bursting with the pangs of anticipated orphanage, tell them that you had the boldness and the justice to stigmatize the monster—who had dared to publish the transaction! Gentlemen, I believe I told you before, that the conduct of the Viceroy was a small part indeed of the subject of this trial. If the vindication of his mere personal character had been, as it ought to have been, the sole object of this prosecution, I should have felt the most respectful regret at seeing a person of his high consideration come forward in a Court of public Justice, in one and the same breath to admit the truth, and to demand the punishment of a publication like the present; to prevent the chance he might have had of such an accusation being disbelieved, and by a prosecution like this to give to the passing stricture of a newspaper, that life and body, and action and reality, that proves it to all mankind, and makes the record of it indelible. Even as it is, I do own I feel the utmost concern that his name should have been soiled, by being mixed in a question, of which it is the mere pretext and scape-goat. Mr. Attorney-General was too wise to state to you the real question, or the object which he wished to be answered by your verdict. Do you remember that he was pleased to say that this publication was a base and foul misrepresentation of the virtue and wisdom of the government, and a false and audacious statement to the world, that the King's government in Ireland was base enough to pay informers for taking away the lives of the people? When I heard this statement to-day, I doubted whether you were aware of its tendency or not. It is now necessary that I should explain it to you more at large.

You cannot be ignorant of the great conflict between prerogative and privilege which hath convulsed the country for the last fifteen years; when I say privilege, you cannot suppose that I mean the privilege of the House of Commons; I mean the privileges of the people. You are no strangers to the various modes by which the people laboured to approach their object. Delegations, conventions, remonstrances, resolutions, petitions to the Parliament, petitions to the Throne. It might not be decorous in this place to state to you with any sharpness the various modes of resistance that were employed on the other side; but you, all of you, seem old enough to remember the variety of Acts of Parliament that have been made, by which the people were deprived, session after session, of what they had supposed to be the known and established fundamentals

of the constitution—the right of public debate, the right of public petition, the right of bail, the right of trial, the right of arms for self-defence; until the last, even the relics of popular privilege became superseded by a military force; the press extinguished; and the state found its last entrenchment in the grave of the constitution. As little can you be strangers to the tremendous confederations of hundreds of thousands of our countrymen, of the nature and the objects of which such a variety of opinions have been propagated and entertained.

The writer of this letter had presumed to censure the recal of Lord Fitzwilliam, as well as the measures of the present Viceroy. Into this subject I do not enter; but you cannot yourselves forget that the conciliatory measures of the former noble Lord had produced an almost miraculous unanimity in this country; and much do I regret, and sure I am that it is not without pain you can reflect, how unfortunately the conduct of his successor has terminated. His intentions might have been the best; I neither know them nor condemn them; but their terrible effects you cannot be blind to. Every new act of coercion has been followed by some new symptoms of discontent, and every new attack provoked some new paroxysm of resentment, or some new combination of resistance. In this deplorable state of affairs, convulsed and distracted within, and menaced by a most formidable enemy from without, it was thought that public safety might be found in union and conciliation, and repeated applications were made to the Parliament of this kingdom, for a calm inquiry into the complaints of the people; these applications were made in vain. Impressed by the same motives, Mr. Fox brought the same subject before the Commons of England, and ventured to ascribe the perilous state of Ireland to the severity of its government. Even his stupendous abilities, excited by the liveliest sympathy with our sufferings, and animated by the most ardent zeal to restore the strength with the union of the empire, were repeatedly exerted without success. The fact of discontent was denied; the fact of coercion was denied; and the consequence was, the coercion became more implacable, and the discontent more threatening and irreconcilable. A similar application was made in the beginning of this session in the Lords of Great Britain, by our illustrious countryman, of whom I do not wonder that my learned friend should have observed, how much virtue can fling pedigree into the shade; or how much the transient honour of a body inhe-

rited from man, is obscured by the lustre of an intellect derived from God. He, after being an eye-witness of this country, presented the miserable picture of what he had seen; and, to the astonishment of every man in Ireland, the existence of those facts was ventured to be denied; the conduct of the present Viceroy was justified and applauded; and the necessity of continuing that conduct was insisted upon, as the only means of preserving the constitution, the peace, and the prosperity of Ireland. The moment the learned Counsel had talked of this publication as a false statement of the conduct of the government, and the condition of the people, no man could be at a loss to see that the awful question, which had been dismissed from the Commons of Ireland, and from the Lords and Commons of Great Britain, is now brought forward to be tried by a side wind, and in a collateral way, by a criminal prosecution.

I tell you, therefore, Gentlemen of the Jury, it is not with respect to Mr. Orr that your verdict is now sought: you are called upon on your oaths to say, that the government is wise and merciful; that the people are prosperous and happy; that military law ought to be continued; that the British constitution could not with safety be restored to this country; and that the statements of a contrary import by your advocates in either country were libellous and false. I tell you these are the questions, and I ask you, can you have the front to give the expected answer in the face of a community who know the country as well as you do? Let me ask you, how could you reconcile with such a verdict, the gaols, the tenders, the gibbets, the conflagrations, the murders, the proclamations that we hear of every day in the streets, and see every day in the country? What are the processions of the learned Counsel himself, circuit after circuit? Merciful God! what is the state of Ireland, and where shall you find the wretched inhabitant of this land! You may find him perhaps in gaol, the only place of security, I had almost said of ordinary habitation; you may see him flying by the conflagration of his own dwelling; or you may find his bones bleaching on the green fields of his country; or he may be found tossing upon the surface of the ocean, and mingling his groans with those tempests, less savage than his persecutors, that drift him to a returnless distance from his family and his home. And yet, with these facts ringing in the ears and starting in the face of the Prosecutors, you are called upon to say, on your oaths, that these facts do not exist. You are called upon, in defiance of shame, of

truth, of honour, to deny the sufferings under which you groan, and to flatter the persecution that tramples you under foot.

But the learned gentleman is further pleased to say, that the Traverser has charged the government with the encouragement of informers. This, Gentlemen, is another small fact that you are to deny at the hazard of your souls, and upon the solemnity of your oaths. You are upon your oaths to say to the sister country, that the government of Ireland uses no such abominable instruments of destruction as informers. Let me ask you honestly, what do you feel, when in my hearing, when in the face of this audience, you are called upon to give a verdict that every man of us, and every man of you know, by the testimony of your own eyes, to be utterly and absolutely false? I speak not now of the public proclamation of informers, with a promise of secrecy, and of extravagant reward; I speak not of the fate of those horrid wretches who have been so often transferred from the table to the dock, and from the dock to the pillory; I speak of what your own eyes have seen, day after day, during the course of this commission, from the box where you are now sitting; the number of horrid miscreants, who avowed upon their oaths that they had come from the very seat of government—from the Castle—where they had been worked upon by the fear of death, and the hopes of compensation, to give evidence against their fellows; that the mild and wholesome councils of this government are holden over these catacombs of living death, where the wretch that is buried a man, lies *till his heart has time to fester and dissolve*, and is then dug up a witness!

Is this fancy, or is it fact? Have you not seen him, after his resurrection from that tomb, after having been dug out of the region of death and corruption, make his appearance upon the table, the living image of life and of death, and the supreme arbiter of both? Have you not marked when he entered, how the stormy wave of the multitude retired at his approach? Have you not marked how the human heart bowed to the supremacy of his power, in the undissembled homage of deferential horror? how his glance, like the lightning of heaven, seemed to rive the body of the accused, and mark it for the grave, while his voice warned the devoted wretch of woe and death; a death which no innocence can escape, no art elude, no force resist, no antidote prevent:—there was an antidote—a Juror's oath—but even that adamant chain, that bound the integrity of man to the

throne of eternal justice, is solved and melted in the breath that issues from the informer's mouth; conscience swings from her moorings, and the appalled and affrighted Juror consults his own safety in the surrender of the victim:—

“ Et quæ sibi quisque timebat,——

“ Unius in miseri exitium conversa tulere.”

Gentlemen, I feel I must have tired your patience; but I have been forced into this length by the Prosecutor, who has thought fit to introduce those extraordinary topics, and to bring a question of mere politics to trial, under the form of a criminal prosecution. I cannot say I am surprised that this has been done, or that you should be solicited by the same inducements, and from the same motives, as if your verdict was a vote of approbation. I do not wonder that the government of Ireland should stand appalled at the state to which we are reduced. I wonder not that they should start at the public voice, and labour to stifle or contradict it. I wonder not that at this arduous crisis, when the very existence of the empire is at stake, and when its strongest and most precious limb is not girt with the sword for battle, but pressed by the tourniquet for amputation; when they find the coldness of death already begun in those extremities where it never ends; that they are terrified at what they have done, and wish to say to the surviving parties of that empire, “ they cannot say that we did it.” I wonder not that they should consider their conduct as no immaterial question for a court of criminal jurisdiction, and wish anxiously, as on an inquest of blood, for the kind acquittal of a friendly Jury. I wonder not that they should wish to close the chasm they have opened, by flinging you into the abyss. But trust me, my countrymen, you might perish in it, but you could not close it; trust me, if it is yet possible to close it, it can be done only by truth and honour; trust me, that such an effect could no more be wrought by the sacrifice of a Jury, than by the sacrifice of Orr. As a state measure, the one would be as unwise and unavailing as the other; but while you are yet upon the brink, while you are yet visible, let me, before we part, remind you once more of your awful situation. The law upon this subject gives you supreme dominion. Hope not for much assistance from his Lordship. On such occasions perhaps the duty of the Court is to be cold and neutral. I cannot but admire the dignity he has supported during this *trial*; I am grateful for his patience. But let me tell you, it is not his province to fan the sacred flame of

patriotism in the Jury-box; as he has borne with the little extravagancies of the law, do you bear with the little failings of the press. Let me therefore remind you, that, though the day may soon come when our ashes shall be scattered before the winds of heaven, the memory of what you do cannot die; it will carry down to your posterity, your honour or your shame. In the presence and in the name of that ever-living God, I do therefore conjure you to reflect, that you have your characters, your consciences, that you have also the character, perhaps the ultimate destiny of your country, in your hands. In that awful name, I do conjure you to have mercy upon your country and yourselves, and so judge now, as you will hereafter be judged; and I do now submit the fate of my client, and of that country which we have yet in common, to your disposal.

Mr. Finnerty was found guilty.

S P E E C H

IN BEHALF OF

ARCHIBALD HAMILTON ROWAN, ESQ.

COURT OF KING'S BENCH, JAN. 29, 1794.

Libel.

ABSTRACT OF THE INFORMATION.

“ Be it remembered, that the Right Honourable Arthur Wolfe, Attorney-General of our present Sovereign Lord the King, gives the Court here to understand and be informed, that Archibald Hamilton Rowan, of the city of Dublin, Esq. being a person of a wicked and turbulent disposition, did, on the 16th day of December, in the 33d year of the reign of our present Sovereign Lord George the Third, publish a certain false, wicked, malicious, scandalous, and seditious libel, that is to say:—

*“ ‘ The Society of United Irishmen at Dublin, to the Volun-
 “ teers of Ireland.—William Drennan, Chairman; Archi-
 “ bald Hamilton Rowan, Secretary.*

“ ‘ CITIZENS SOLDIERS,

*“ ‘ You first took up arms to protect your country from
 “ foreign enemies and from domestic disturbance ; for the
 “ same purposes it now becomes necessary that you should
 “ resume them : a proclamation has been issued in England,
 “ for embodying the militia ; and a proclamation has been
 “ issued by the Lord-Lieutenant and Council in Ireland, for
 “ repressing all seditious associations. In consequence of
 “ both these proclamations, it is reasonable to apprehend
 “ danger from abroad, and danger at home. From whence
 “ but from apprehended danger are these menacing prepa-
 “ rations for war drawn through the streets of this capital ?
 “ from whence, if not to create that internal commotion
 “ which was not found, to shake that credit which was not
 “ affected, to blast that volunteer honour which was hitherto
 “ inviolate, are those terrible suggestions, and rumours, and
 “ whispers, that meet us at every corner, and agitate at least
 “ our old men, our women, and our children ? Whatever
 “ be the motive, or from whatever quarter it arises, alarm
 “ has arisen ; and you, Volunteers of Ireland, are therefore
 “ summoned to arms at the instance of government, as well
 “ as by the responsibility attached to your character, and the
 “ permanent obligations of your institution. We will not
 “ at this day condescend to quote authorities for the right
 “ of having and of using arms ; but we will cry aloud, even
 “ amidst the storm raised by the witchcraft of a proclama-
 “ tion, that to your formation was owing the peace and pro-
 “ tection of this island ; to your relaxation has been owing
 “ its relapse into impotence and insignificance ; to your re-
 “ novation must be owing its future freedom, and its present
 “ tranquillity : you are therefore summoned to arms, in
 “ order to preserve your country in that guarded quiet
 “ which may secure it from external hostility, and to
 “ maintain that internal regimen throughout the land, which,
 “ superseding a notorious police or a suspected militia, may
 “ preserve the blessings of peace by a vigilant preparation
 “ for war.—Citizens Soldiers, to arms ! Take up the shield
 “ of freedom and the pledges of peace—peace, the motive
 “ and end of your virtuous institution—war, an occasional
 “ duty, ought never to be made an occupation ; every man
 “ should become a soldier in the defence of his rights ; no*

“ man ought to continue a soldier for offending the rights of
 “ others: the sacrifice of life in the service of our country is
 “ a duty much too honourable to be entrusted to mercenaries;
 “ and at this time, when your country has, by public authority,
 “ been declared in danger, we conjure you by your interest,
 “ your duty, and your glory, to stand to your arms; and, in spite
 “ of a police, in spite of a fencible militia, in virtue of two pro-
 “ clamations, to maintain good order in your vicinage, and tran-
 “ quillity in Ireland: it is only by the military array of men in
 “ whom they confide, whom they have been accustomed to re-
 “ vere as the guardians of domestic peace, the protectors of
 “ their liberties and lives, that the present agitation of the peo-
 “ ple can be stilled, that tumult and licentiousness can be re-
 “ pressed, obedience secured to existing law, and a calm
 “ confidence diffused through the public mind, in the
 “ speedy resurrection of a free constitution, of liberty and of
 “ equality,—words which we use for an opportunity of re-
 “ pelling calumny, and of saying, that by liberty we never
 “ understood unlimited freedom, nor by equality the level-
 “ ling of property, or the destruction of subordination; this
 “ is a calumny invented by that faction, or that gang, which
 “ misrepresents the King to the people, and the people to
 “ the King; traduces one half of the nation, to cajole the
 “ other; and, by keeping up mistrust and division, wishes
 “ to continue the proud arbitrators of the fortune and fate
 “ of Ireland: liberty is the exercise of all our rights, natural
 “ and political, secured to us and our posterity by a real re-
 “ presentation of the people; and equality is the extension
 “ of the constituent to the fullest dimensions of the constitu-
 “ tion—of the elective franchise to the whole body of the
 “ people; to the end that government, which is collective
 “ power, may be guided by collective will; and that legis-
 “ lation may originate from public reason, keep pace with
 “ public improvement, and terminate in public happiness.
 “ If our constitution be imperfect, nothing but a reform in
 “ representation will rectify its abuses; if it be perfect,
 “ nothing but the same reform will perpetuate its blessings.
 “ We now address you as citizens, for to be citizens you be-
 “ came soldiers; nor can we help wishing that all soldiers,
 “ partaking the passions and interest of the people, would
 “ remember that they were once citizens; that seduction made
 “ them soldiers, but nature made them men. We address
 “ you without any authority, save that of reason; and if we
 “ obtain the coincidence of public opinion, it is neither by
 “ force nor stratagem; for we have no power to terrify, no

“artifice to cajole, no fund to seduce; here we sit, without
 “mace or beadle, neither a mystery nor a craft, nor a corpo-
 “ration; in four words lies all our power—universal eman-
 “cipation and representative legislature; yet we are con-
 “fident, that on the pivot of this principle, a convention,
 “still less, a society, still less, a single man, will be able first
 “to move and then to raise the world: we therefore wish
 “for Catholic emancipation without any modification, but
 “still we consider this necessary enfranchisement as merely
 “the portal to the temple of national freedom; wide as this
 “entrance is, wide enough to admit three millions, it is narrow
 “when compared to the capacity and comprehension of our
 “beloved principle, which takes in every individual of the
 “Irish nation, casts an equal eye over the whole island,
 “embraces all that think, and feels for all that suffer:
 “the Catholic cause is subordinate to our cause, and
 “included in it; for, as united Irishmen, we adhere to
 “no sect, but to society—to no cause, but Christianity—to
 “no party, but the whole people. In the sincerity of our
 “souls do we desire Catholic emancipation: but were it ob-
 “tained to-morrow, to-morrow would we go on as we do to-
 “day, in the pursuit of that reform, which would still be
 “wanting to ratify their liberties as well as our own. For
 “both these purposes it appears necessary that provincial
 “conventions should assemble preparatory to the conven-
 “tion of the Protestant people; the delegates of the Catholic
 “body are not justified in communicating with individuals,
 “or even bodies of inferior authority; and therefore an as-
 “sembly of a similar nature and organization is necessary to
 “establish an intercourse of sentiments, an uniformity of con-
 “duct, an united cause, and an united nation; if a convention
 “on the one part does not soon follow, and is not soon con-
 “nected with that on the other, the common cause will split
 “into the partial interest, the people will relapse into inat-
 “tention and inertness, the union of affection and exertion
 “will dissolve, and too probably some local insurrections,
 “instigated by the malignity of our common enemy, may
 “commit the character, and risque the tranquillity of the
 “island, which can be obviated only by the influence of an
 “assembly arising from, assimilated with the people,
 “and whose spirit may be, as it were, knit with the soul
 “of the nation; unless the sense of the Protestant peo-
 “ple be on their part as fairly collected, and as judici-
 “ally directed; unless individual exertion consolidates into
 “collective strength; unless the particles unite into one

“ mass; we may, perhaps, serve some person or some party
 “ for a little, but the public not at all: the nation is neither
 “ insolent, nor rebellious, nor seditious; while it knows its
 “ rights, it is unwilling to manifest its powers; it would rather
 “ supplicate administration to anticipate revolution by well-
 “ timed reform, and to save their country in mercy to them-
 “ selves. The 15th of February approaches, a day ever
 “ memorable in the annals of the country, as the birth-day of
 “ new Ireland: let parochial meetings be held as soon as
 “ possible; let each parish return delegates; let the sense of
 “ Ulster be again declared from Dungannon on a day auspi-
 “ cious to union, peace, and freedom; and the spirit of the
 “ north will again become the spirit of the nation. The
 “ civil assembly ought to claim the attendance of the military
 “ associations; and we have addressed you, Citizens Soldiers,
 “ on this subject, from the belief that your body, uniting
 “ conviction with zeal, and zeal with activity, may have
 “ much influence over your countrymen, your relations, and
 “ friends. We offer only a general outline in the public,
 “ and, meaning to address Ireland, presume not at present
 “ to fill up the plan, or preoccupy the mode of its execu-
 “ tion. We have thought it our duty to speak;—answer us
 “ by actions: you have taken time for consideration; fourteen
 “ long years have elapsed since the rise of your associations;
 “ and in 1782 did you imagine that in 1792 this nation would
 “ still remain unrepresented? How many nations in this
 “ interval have gotten the start of Ireland? How many of
 “ your countrymen have sunk into the grave.”

A Jury being sworn, the Attorney-General stated the case on the part of the Crown. The evidence being gone through,—

Mr. Curran said,—

Gentlemen of the Jury, when I consider the period at which this prosecution is brought forward; when I behold the extraordinary safe-guard of armed soldiers resorted to,* no doubt for the preservation of peace and order; when I catch, as I cannot but do, the throb of public anxiety which beats from one end to the other of this hall; when I reflect on what may be the fate of a man of the most beloved

* A few moments before Mr. Curran entered into his client's defence, a guard was brought into the Court-house by the Sheriff.

personal character, of one of the most respected families of our country, himself the only individual of that family, I may almost say of that country, who can look to that possible fate with unconcern? Feeling as I do all these impressions, it is in the honest simplicity of my heart I speak, when I say, that I never rose in a Court of Justice with so much embarrassment, as upon this occasion.

If, Gentlemen, I could entertain a hope of finding refuge for the disconcertion of my mind in the perfect composure of yours; if I could suppose that those awful vicissitudes of human events, which have been stated or alluded to, could leave your judgment undisturbed, and your hearts at ease; I know I should form a most erroneous opinion of your character: I entertain no such chimerical hope; I form no such unworthy opinion; I expect not that your hearts can be more at ease than my own; I have no right to expect it; but I have a right to call upon you, in the name of your country, in the name of the living God, of whose eternal justice you are now administering that portion which dwells with us on this side of the grave, to discharge your breasts, as far as you are able, of every bias of prejudice or passion; that if my client be guilty of the offence charged upon him, you may give tranquillity to the public, by a firm verdict of conviction; or, if he be innocent, by as firm a verdict of acquittal: and that you will do this in defiance of the paltry artifices and senseless clamours that have been resorted to, in order to bring him to his trial with anticipated conviction. And, Gentlemen, I feel an additional necessity of thus conjuring you to be upon your guard, from the able and imposing statement which you have just heard on the part of the prosecution. I know well the virtues and talents of the excellent person who conducts that prosecution;* I know how much he would disdain to impose on you by the trappings of office; but I also know how easily we mistake the lodgment which character and eloquence can make upon our feelings, for those impressions that reason, and fact, and proof, only ought to work upon our understandings.

Perhaps, Gentlemen, I shall act not unwisely in waving any further observation of this sort, and giving your minds an opportunity of growing cool and resuming themselves, by coming to a calm and uncoloured statement of mere facts, premising only to you, that I have it in strictest injunction from my client, to defend him upon facts and

* The late Lord Kilwarden, then Attorney-General.

evidence only, and to avail myself of no technical artifice or subtilty that could withdraw his cause from the test of that inquiry which it is your province to exercise, and to which only he wishes to be indebted for an acquittal.

In the month of December, 1792, Mr. Rowan was arrested on an information, charging him with the offence for which he is now on his trial. He was taken before an honourable personage now on that bench, and admitted to bail.*

He remained a considerable time in this city, soliciting the present prosecution, and offering himself to a fair trial by a Jury of his country; but it was not then thought fit to yield to that solicitation; nor has it now been thought proper to prosecute him in the ordinary way, by sending up a bill of indictment to a grand Jury.

I do not mean by this to say that informations *ex-officio* are always oppressive or unjust; but I cannot but observe to you, that when a petty Jury is called upon to try a charge not previously found by the grand inquest, and supported by the naked assertion only of the King's Prosecutor, that the accusation labours under a weakness of probability which it is difficult to assist. If the charge had no cause of dreading the light—if it was likely to find the sanction of a grand Jury—it is not easy to account why it deserted the more usual, the more popular, and the more constitutional mode, and preferred to come forward in the ungracious form of an *ex-officio* information.

If such a bill had been sent up and found, Mr. Rowan would have been tried at the next commission; but a speedy trial was not the wish of his Prosecutors. An information was filed, and when he expected to be tried upon it, an error, it seems, was discovered in the record. Mr. Rowan offered to wave it, or consent to any amendment desired. No—that proposal could not be accepted—a trial must have followed. That information, therefore, was withdrawn, and a new one filed: that is, in fact, a third prosecution was instituted upon the same charge. This last was filed on the 8th day of last July.

Gentlemen, these facts cannot fail of a due impression upon you. You will find a material part of your inquiry must be, whether Mr. Rowan is pursued as a criminal, or hunted down as a victim. It is not, therefore, by insinuation or circuitry, but it is boldly and directly that I assert, that oppression has been intended and practised upon him, and

* The honourable Justice Downes.

by those facts which I have stated, I am warranted in the assertion.

His demand, his entreaty to be tried, was refused,—and why? A hue and cry was to be raised against him; the sword was to be suspended over his head; some time was necessary for the public mind to become heated by the circulation of artful clamours of anarchy and rebellion; these same clamours, which, with more probability, but not more success, had been circulated before through England and Scotland. In this country, the causes and the swiftness of their progress were as obvious as their folly has since become, to every man of the smallest observation. I have been stopped myself, with, “Good God, sir, have you heard the news?”—“No, sir; what?”—“Why, one French emissary was seen travelling through Connaught in a post-chaise, and scattering from the windows, as he passed, little doses of political poison, made up in square bits of paper—another was actually surprised in the fact of seducing our good people from their allegiance, by discourses upon the indivisibility of French robbery and massacre, which he preached in the French language to a congregation of Irish peasants.”

Such are the bugbears and spectres to be raised to warrant the sacrifice of whatever little public spirit may remain amongst us. But time has also detected the imposture of these Cock-lane apparitions; and you cannot now, with your eyes open, give a verdict, without asking your consciences this question—Is this a fair and honest prosecution?—is it brought forward with the single view of vindicating public justice, and promoting public good? And here let me remind you, that you are not convened to try the guilt of a libel, affecting the personal character of any private man: I know no case in which a Jury ought to be more severe, than where personal calumny is conveyed through a vehicle, which ought to be consecrated to public information; neither, on the other hand, can I conceive any case in which the firmness and the caution of a Jury should be more exerted, than when a subject is prosecuted for a libel on the state. The peculiarity of the British constitution (to which, in its fullest extent, we have an undoubted right, however distant we may be from the actual enjoyment), and in which it surpasses every known government in Europe, is this—that its only professed object is the general good, and its only foundation the general will; hence the people have a right acknowledged from time immemorial, fortified by a pile of statutes, and authenticated by a revolution that

speaks louder than them all, to see whether abuses have been committed, and whether their properties and their liberties have been attended to as they ought to be.

This is a kind of subject which I feel myself overawed when I approach; there are certain fundamental principles which nothing but necessity should expose to public examination; they are pillars, the depth of whose foundation you cannot explore, without endangering their strength; but let it be recollected, that the discussion of such topics should not be condemned in me, nor visited upon my client: the blame, if any there be, should rest only with those who have forced them into discussion. I say, therefore, it is the right of the people to keep an eternal watch upon the conduct of their rulers; and in order to that, the freedom of the press has been cherished by the law of England. In private defamation, let it never be tolerated; in wicked and wanton aspersion upon a good and honest administration, let it never be supported. Not that a good government can be exposed to danger by groundless accusation, but because a bad government is sure to find, in the detected falsehood of a licentious press, a security and a credit, which it could never otherwise obtain.

I said a good government cannot be endangered; I say so again; for whether it is good or bad, it can never depend upon assertion: the question is decided by simple inspection; to try the tree, look at its fruit; to judge of the government, look at the people. What is the fruit of a good government?—the virtue and happiness of the people. Do four millions of people in this country gather those fruits from that government, to whose injured purity, to whose spotless virtue and violated honour, this seditious and atrocious libeller is to be immolated upon the altar of the constitution? To you, Gentlemen of the Jury, who are bound by the most sacred obligation to your country and your God, to speak nothing but the truth, I put the question—Do the people of this country gather those fruits? Are they orderly, industrious, religious, and contented? Do you find them free from bigotry and ignorance, those inseparable concomitants of systematic oppression? Or, to try them by a test as unerring as any of the former, are they united? The period has now elapsed in which considerations of this extent would have been deemed improper to a Jury; happily for those countries, the legislature of each has lately changed, or, perhaps to speak more properly, revived and restored the law respecting trials of this kind. For the

space of thirty or forty years, a usage had prevailed in Westminster-hall, by which the Judges assumed to themselves the decision of the question, whether libel or not; but the learned Counsel for the prosecution are now obliged to admit that this is a question for the Jury only to decide. You will naturally listen with respect to the opinion of the Court, but you will receive it as a matter of advice, not as a matter of law; and you will give it credit, not from any adventitious circumstances of authority, but merely so far as it meets the concurrence of your own understandings.

Give me leave now to state to you the charge, as it stands upon the record:—It is, “that Mr. Rowan, being a person of
 “a wicked and turbulent disposition, and maliciously de-
 “signing and intending to excite and diffuse among the sub-
 “jects of this realm of Ireland, discontents, jealousies, and
 “suspicions of our Lord the King and his government, and
 “disaffection and disloyalty to the person and government
 “of our said Lord the King, and to raise very dangerous
 “seditions and tumults within this kingdom of Ireland, and
 “to draw the government of this kingdom into great scan-
 “dal, infamy, and disgrace, and to incite the subjects of our
 “said Lord the King, to attempt, by force and violence, and
 “with arms, to make alterations in the government, state,
 “and constitution of this kingdom, and to incite his Majesty’s
 “said subjects to tumult and anarchy, and to overturn the
 “established constitution of this kingdom, and to overawe
 “and intimidate the legislature of this kingdom by an armed
 “force;” did “maliciously and seditiously” publish the
 paper in question.

Gentlemen, without any observation of mine, you must see that this information contains a direct charge upon Mr. Rowan; namely, that he did, with the intents set forth in the information, publish this paper; so that here you have in fact two or three questions for your decision. First, the matter of fact of the publication; namely, did Mr. Rowan publish that paper? If Mr. Rowan did not in fact publish that paper, you have no longer any question on which to employ your minds: if you think that he was in fact the publisher, then, and not till then, arises the great and important subject to which your judgments must be directed. And that comes shortly and simply to this—Is the paper a libel? and did he publish it with the intent charged in the information? For whatever you may think of the abstract question, whether the paper be libellous or not, and of which paper it has not even been insinuated that he is the author, there can

be no ground for a verdict against him, unless you also are persuaded that what he did was done with a criminal design.

I wish, Gentlemen, to simplify, and not to perplex; I therefore say again, if these three circumstances conspire, that he published it—that it was a libel—and that it was published with the purposes alleged in the information, you ought unquestionably to find him guilty: if, on the other hand, you do not find that all these circumstances concurred;—if you cannot upon your oaths say that he published it;—if it be not in your opinion a libel;—and if he did not publish it with the intention alleged: I say, upon the failure of any one of these points, my client is entitled, in justice, and upon your oaths, to a verdict of acquittal.

Gentlemen, Mr. Attorney-General has thought proper to direct your attention to the state and circumstances of public affairs at the time of this transaction; let me also make a few retrospective observations on a period at which he has but slightly glanced; I speak of the events which took place before the close of the American war.

You know, Gentlemen, that France had espoused the cause of America, and we became thereby engaged in a war with that nation.

“*Heu nescia mens hominum futuri!*”

Little did that ill-fated monarch know that he was forming the first causes of those disastrous events, that were to end in the subversion of his throne, in the slaughter of his family, and the deluging of his country with the blood of his people. You cannot but remember that, at a time when we had scarcely a regular soldier for our defence—when the old and young were alarmed and terrified with apprehensions of descent upon our coasts—that Providence seemed to have worked a sort of miracle in our favour. You saw a band of armed men come forth at the great call of nature, of honour, and their country. You saw men of the greatest wealth and rank; you saw every class of the community give up its members, and send them armed into the field, to protect the public and private tranquillity of Ireland. It is impossible for any man to turn back to that period, without reviving those sentiments of tenderness and gratitude, which then beat in the public bosom: to recollect amidst what applause, what tears, what prayers, what benedictions, they walked forth amongst spectators, agitated by the mingled sensations of terror and of reliance, of danger and

of protection, imploring the blessings of heaven upon their heads, and its conquest upon their swords. That illustrious, and adored, and *abused* body of men, stood forward, and assumed the title, which I trust the ingratitude of their country will never blot from its history, "THE VOLUNTEERS OF IRELAND."

Give me leave now, with great respect, to put this question to you—Do you think the assembling of that glorious band of patriots was an insurrection? Do you think the invitation to that assembling would have been sedition? They came under no commission but the call of their country; unauthorized and unsanctioned, except by public emergency and public danger. I ask, was that meeting insurrection or not? I put another question—if any man then had published a call on that body, and stated that war was declared against the state; that the regular troops were withdrawn; that our coasts were hovered round by the ships of the enemy; that the moment was approaching, when the unprotected feebleness of age and sex, when the sanctity of habitation would be disregarded and profaned by the brutal ferocity of a rude invader; if any man had then said to them, "Leave your industry for a while, that you may return to it again, and come forth in arms for the public defence:"—I put the question boldly to you—it is not the case of the volunteers of that day; it is the case of my client at this hour, which I put to you—Would that call have been then pronounced in a Court of Justice, or by a Jury on their oaths, a criminal and seditious invitation to insurrection? If it would not have been so then, upon what principle can it be so now? What is the force and perfection of the law?—it is, the permanency of the law; it is, that whenever the fact is the same, the law is also the same; it is, that the letter remains a written, monumented and recorded letter, to pronounce the same decision, upon the same facts, whenever they shall arise. I will not affect to conceal it: you know there has been artful, ungrateful, and blasphemous clamour raised against these illustrious characters, the saviours of the kingdom of Ireland. Having mentioned this, let me read a few words of the paper alleged to be criminal. "You first took up arms to protect your country from foreign enemies, and from domestic disturbance. For the same purposes, it now becomes necessary that you should resume them."

I should be the last man in the world to impute any want of candour to the Right Honourable Gentleman, who has

stated the case on behalf of the prosecution; but he has certainly fallen into a mistake, which, if not explained, might be highly injurious to my client. He supposed that this publication was not addressed to those ancient volunteers, but to new combinations of them, formed upon new principles, and actuated by different motives. You have the words to which this construction is imputed upon the record; the meaning of his mind can be collected only from those words which he has made use of to convey it. The guilt imputable to him can only be inferred from the meaning ascribable to those words. Let his meaning then be fairly collected by resorting to them. Is there a foundation to suppose that this address was directed to any such body of men, as has been called a banditti (with what justice it is unnecessary so inquire), and not to the old volunteers?

As to the sneer at the words *Citizens Soldiers*, I should feel that I was treating a very respected friend with an insidious and unmerited unkindness, if I affected to expose it by any gravity of refutation. I may, however, be permitted to observe, that those who are supposed to have disgraced this expression by adopting it, have taken it from the idea of the British constitution, "that no man in becoming a soldier ceases to be a citizen." Would to God, all enemies as they are, that that unfortunate people had borrowed more from that sacred source of liberty and virtue; and would to God, for the sake of humanity, that they had preserved even the little they did borrow! If ever there could be an objection to that appellation, it must have been strongest when it was first assumed.* To that period the writer manifestly alludes; he addresses "those who first took up arms:" "You first took up arms to protect your country from foreign enemies and from domestic disturbance. For the same purposes, it now becomes necessary that you should resume them." Is this applicable to those who had never taken up arms before? "A proclamation," says this paper, "has been issued in England for embodying the militia, and a proclamation has been issued by the Lord-Lieutenant and Council of Ireland, for repressing all seditious associations. In consequence of both these proclamations, it is reasonable to apprehend danger from abroad, and danger at home." God help us from the situation of Europe at that time; we were threatened with too probable danger

* In the resolutions and addresses of the old volunteers, at and prior to 1783, the terms *citizens soldiers*, and *citizen soldiery*, were no uncommon appellations.

from abroad, and I am afraid it was not without foundation we were told of our having something to dread at home.

I find much abuse has been lavished on the disrespect with which the proclamation is treated, in that part of the paper alleged to be a libel. To that my answer for my client is short: I do conceive it competent to a British subject, if he thinks that a proclamation has issued for the purpose of raising false terrors; I hold it to be not only the privilege, but the duty of a citizen, to set his countrymen right, with respect to such misrepresented danger: and until a proclamation in this country shall have the force of law, the reason and grounds of it are surely at least questionable by the people. Nay, I will go farther,—if an actual law had passed, receiving the sanction of the three estates, if it be exceptionable in any matter, it is warrantable to any man in the community to state, in a becoming manner, his ideas upon it. And I should be at a loss to know, if the positive laws of Great Britain are thus questionable, upon what grounds the proclamation of an Irish government should not be open to the animadversion of Irish subjects.

“Whatever be the motive, or from whatever quarter it arises,” says this paper, “alarm has arisen.” Gentlemen, do you not know that to be fact? It has been stated by the Attorney-General, and most truly, that the most gloomy apprehensions were entertained by the whole country. “You, volunteers of Ireland, are therefore summoned to arms, at the instance of government, as well as by the responsibility attached to your character, and the permanent obligations of your institution.” I am free to confess, if any man, assuming the liberties of a British subject to question public topics, should, under the mask of that privilege, publish a proclamation, inviting the profligate and seditious, those in want, and those in despair, to rise up in arms to overawe the legislature, to rob us of whatever portion of the blessing of a free government we possess; I know of no offence involving greater enormity. But that, Gentlemen, is the question you are to try. If my client acted with an honest mind and fair intention, and having, as he believed, the authority of government to support him in the idea that danger was to be apprehended, did apply to that body of so known and so revered a character, calling upon them by their former honour, the principles of their glorious institution, and the great stake they possessed in their country:—if he interposed, not upon a fictitious pretext,

but a real belief of actual and imminent danger, and that their arming at that critical moment was necessary to the safety of their country; his intention was not only innocent, but highly meritorious. It is a question, Gentlemen, upon which you only can decide; it is for you to say, whether it was criminal in the Defendant to be misled, and whether he is to fall a sacrifice to the prosecution of that government, by which he was so deceived. I say again, Gentlemen, you can look only to his words as the interpreters of his meaning; and to the state and circumstances of his country, as he was made to believe them, as the clue to his intention. The case then, Gentlemen, is shortly and simply this; a man of the first family, and fortune, and character, and property, among you, reads a proclamation, stating the country to be in danger from abroad and at home; and thus alarmed—thus upon the authority of the Prosecutor alarmed, applies to that august body, before whose awful presence sedition must vanish, and insurrection disappear. You must surrender, I hesitate not to say, your oaths to unfounded assertion, if you can submit to say, that such an act, of such a man, so warranted, is a wicked and seditious libel. If he was a dupe, let me ask you, who was the impostor? I blush and shrink with shame and detestation from that meanness of dupery and servile complaisance, which could make that dupe a victim to the accusation of an impostor.

You perceive, Gentlemen, that I am going into the merits of this publication, before I apply myself to the question which is first in order of time, namely, whether the publication, in point of fact, is to be ascribed to Mr. Rowan or not. I have been unintentionally led into this violation of order. I should effect no purpose of either brevity or clearness, by returning to the more methodical course of observation. I have been naturally drawn from it by the superior importance of the topic I am upon, namely, the merit of the publication in question.

This publication, if ascribed at all to Mr. Rowan, contains four distinct subjects: the first, the invitation to the volunteers to arm; upon that I have already observed: but those that remain are surely of much importance, and no doubt are prosecuted as equally criminal. The paper next states the necessity of a reform in Parliament: it states, thirdly, the necessity of an emancipation of the Catholic inhabitants of Ireland; and as necessary to the achievement of all these objects, does, fourthly, state the necessity of a general delegated convention of the people.

It has been alleged, that Mr. Rowan intended by this publication, to excite the subjects of this country to effect an alteration in the form of your constitution. And here, Gentlemen, perhaps you may not be unwilling to follow a little farther than Mr. Attorney-General has done, the idea of a late prosecution in Great Britain, upon the subject of a public libel. It is with peculiar fondness I look to that country for solid principles of constitutional liberty and judicial example. You have been pressed in no small degree with the manner in which this publication marks the different orders of our constitution, and comments upon them. Let me show you what boldness of animadversion on such topics is thought justifiable in the British nation, and by a British Jury. I have in my hand the report of the trial of the printers of the Morning Chronicle, for a supposed libel against the state, and of their acquittal: let me read to you some passages from that publication, which a Jury of Englishmen were in vain called upon to brand with the name of libel.

“ Claiming it as our indefeasible right to associate together,
 “ in a peaceable and friendly manner, for the communication
 “ of thoughts, the formation of opinions, and to promote the
 “ general happiness, we think it unnecessary to offer any
 “ apology for inviting you to join us in this manly and
 “ benevolent pursuit; the necessity of the inhabitants of
 “ every community endeavouring to procure a true knowledge
 “ of their rights, their duties, and their interests, will not be
 “ denied, except by those who are the slaves of prejudice,
 “ or interested in the continuation of abuses. As men who
 “ wish to aspire to the title of freemen, we totally deny the
 “ wisdom and the humanity of the advice, to approach the
 “ defects of government with ‘ pious awe and trembling
 “ solicitude.’ What better doctrine could the Pope or the
 “ tyrants of Europe desire? We think, therefore, that the
 “ cause of truth and justice can never be hurt by temperate
 “ and honest discussions; and that cause which will not
 “ bear such a scrutiny, must be systematically or practically
 “ bad. We are sensible that those who are not friends to
 “ the general good, have attempted to inflame the public
 “ mind with the cry of ‘ Danger,’ whenever men have asso-
 “ ciated for discussing the principles of government; and
 “ we have little doubt but such conduct will be pursued in
 “ this place; we would therefore caution every honest man,
 “ who has really the welfare of the nation at heart, to avoid
 “ being led away by the prostituted clamours of those who
 “ live on the sources of corruption. We pity the fears of the

“timorous, and we are totally unconcerned respecting the
“false alarms of the venal.—

—“We view with concern the frequency of wars.—We
“are persuaded that the interests of the poor can never be
“promoted by accession of territory, when bought at the
“expense of their labour and blood; and we must say, in the
“language of a celebrated author—‘We, who are only the
“people, but who pay for wars with our substance and our
“blood, will not cease to tell kings,’ or governments, ‘that
“to them alone wars are profitable; that the true and just
“conquests are those which each makes at home, by com-
“forting the peasantry, by promoting agriculture and manu-
“factories, by multiplying men and the other productions
“of nature; that then it is that kings may call themselves
“the image of God, whose will is perpetually directed to
“the creation of new beings. If they continue to make
“us fight, and kill one another in uniform, we will continue
“to write and speak, until nations shall be cured of this
“folly.’—We are certain our present heavy burdens are
“owing, in a great measure, to cruel and impolitic wars,
“and therefore we will do all on our part, as peaceable
“citizens, who have the good of the community at heart,
“to enlighten each other, and protest against them.

“The present state of the representation of the people
“calls for the particular attention of every man who has
“humanity sufficient to feel for the honour and happiness
“of his country; to the defects and corruptions of which
“we are inclined to attribute unnecessary wars, &c. &c.
“We think it a deplorable case when the poor must support
“a corruption which is calculated to oppress them; when
“the labourer must give his money to afford the means of
“preventing him having a voice in its disposal; when the
“lower classes may say,—We give you our money, for which
“we have toiled and sweat, and which would save our
“families from cold and hunger; but we think it more hard
“that there is nobody whom we have delegated, to see that
“it is not improperly and wickedly spent; we have none to
“watch over our interests; the rich only are represented.”—

—“An equal and uncorrupt representation would, we are
“persuaded, save us from heavy expenses, and deliver us
“from many oppressions; we will therefore do our duty to
“procure this reform, which appears to us of the utmost
“importance.

“In short, we see, with the most lively concern, an army
“of placemen, pensioners, &c., fighting in the cause of cor-

“ruption and prejudice, and spreading the contagion far
“and wide,—

—“We see with equal sensibility the present outcry
“against reforms, and a proclamation (tending to cramp the
“liberty of the press, and discredit the true friends of
“the people), receiving the support of numbers of our coun-
“trymen.—

“We see burdens multiplied—the lower classes sinking
“into poverty, disgrace, and excesses, and the means of
“those shocking abuses increased for the purpose of
“revenue.—

“We ask ourselves—‘Are we in England?’—Have our
“forefathers fought, bled, and conquered for liberty? And
“did they not think that the fruits of their patriotism would
“be more abundant in peace, plenty, and happiness?—

—“Is the condition of the poor never to be improved?
“Great Britain must have arrived at the highest degree of
“national happiness and prosperity, and our situation must
“be too good to be mended, or the present outcry against
“reforms and improvements is inhuman and criminal. But
“we hope our condition will be speedily improved, and to
“obtain so desirable a good, is the object of our present
“association: an union founded on principles of benevo-
“lence and humanity; disclaiming all connexion with riots
“and disorder, but firm in our purpose, and warm in our
“affections for liberty.

“Lastly—we invite the friends of freedom throughout
“Great Britain to form similar societies, and to act with
“unanimity and firmness, till the people be too wise to be
“imposed upon; and their influence in the government be
“commensurate with their dignity and importance—*Then*
“*shall we be free and happy.*”

Such, Gentlemen, is the language which a subject of
Great Britain thinks himself warranted to hold, and upon
such language has the corroborating sanction of a British
Jury been stamped by a verdict of acquittal. Such was the
honest and manly freedom of publication; in a country too,
where the complaint of abuses has not half the foundation
it has here. I said I loved to look to England for prin-
ciples of judicial example; I cannot but say to you that it
depends on your spirit, whether I shall look to it hereafter
with sympathy or with shame. Be pleased, now, Gentlemen,
to consider whether the statement of the imperfection in
your representation has been made with a desire of inflaming
an attack upon the public tranquillity, or with an honest

purpose of procuring a remedy for an actually existing grievance.

It is impossible not to revert to the situation of the times ; and let me remind you, that whatever observations of this kind I am compelled thus to make in a Court of Justice, the uttering of them in this place is not imputable to my client, but to the necessity of defence imposed upon him by this extraordinary prosecution.

Gentlemen, the representation of our people is the vital principle of their political existence ; without it they are dead, or they live only to servitude ; without it there are two estates acting upon and against the third, instead of acting in co-operation with it ; without it, if the people are oppressed by their Judges, where is the tribunal to which their Judges can be amenable ? without it, if they are trampled upon and plundered by a Minister, where is the tribunal to which the offender shall be amenable ? without it, where is the ear to hear, or the heart to feel, or the hand to redress their sufferings ? Shall they be found, let me ask you, in the accursed bands of imps and minions that bask in their disgrace, and fatten upon their spoils, and flourish upon their ruin ? But let me not put this to you as a merely speculative question. It is a plain question of fact : rely upon it, physical man is everywhere the same ; it is only the various operation of moral causes that gives variety to the social or individual character and condition. How otherwise happens it, that modern slavery looks quietly at the despot, on the very spot where Leonidas expired ? The answer is, Sparta has not changed her climate, but she has lost that government, which her liberty could not survive.

I call you, therefore, to the plain question of fact. This paper recommends a reform in Parliament : I put that question to your consciences ; do you think it needs that reform ? I put it boldly and fairly to you, do you think the people of Ireland are represented as they ought to be ? Do you hesitate for an answer ? If you do, let me remind you, that until the last year, three millions of your countrymen, have by the express letter of the law, been excluded from the reality of actual, and even from the phantom of virtual representation. Shall we then be told that this is only the affirmation of a wicked and seditious incendiary ? If you do not feel the mockery of such a charge, look at your country ; in what state do you find it ? Is it in a state of tranquillity and general satisfaction ? These are traces by which good are ever to be distinguished from bad governments,

without any very minute inquiry or speculative refinement, Do you feel that a veneration for the law, a pious and humble attachment to the constitution, from the political morality of your people? Do you find that comfort and competency among your people, which are always to be found where a government is mild and moderate; where taxes are imposed by a body, who have an interest in treating the poorer orders with compassion, and preventing the weight of taxation from pressing sore upon them?

Gentlemen, I mean not to impeach the state of your representation; I am not saying that it is defective, or that it ought to be altered or amended; nor is this a place for me to say, whether I think that three millions of the inhabitants of a country, whose whole number is but four, ought to be admitted to any efficient situation in the state. It may be said, and truly, that these are not questions for either of us directly to decide; but you cannot refuse them some passing consideration at least; when you remember that on this subject the real question for your decision is, whether the allegation of a defect in your constitution is so utterly unfounded and false, that you can ascribe it only to the malice and perverseness of a wicked mind, and not to the innocent mistake of an ordinary understanding;—whether it may not be mistake; whether it can be only sedition.

And here, Gentlemen, I own, I cannot but regret, that one of our countrymen should be criminally pursued, for asserting the necessity of a reform, at the very moment, when that necessity seems admitted by the Parliament itself; that this unhappy reform shall at the same moment be a subject of legislative discussion, and criminal prosecution. Far am I from imputing any sinister design to the virtue or wisdom of our government; but who can avoid feeling the deplorable impression that must be made on the public mind, when the demand for that reform is answered by a criminal information!

I am the more forcibly impressed by this consideration, when I consider, that when this information was first put on the file, the subject was transiently mentioned in the House of Commons. Some circumstances retarded the progress of the inquiry there, and the progress of the information was equally retarded here. On the first day of this session, you all know, that subject was again brought forward in the House of Commons, and, as if they had slept together, this prosecution was also revived in the Court of King's Bench,

and that before a Jury taken from a panel partly composed of those very Members of Parliament, who, in the House of Commons, must debate upon this subject as a measure of public advantage, which they are here called upon to consider as a public crime.*

This paper, Gentleman, insists upon the necessity of emancipating the Catholics of Ireland, and that is charged as part of the libel. If they had waited another year, if they had kept this prosecution impending for another year, how much would remain for a Jury to decide upon, I should be at a loss to discover. It seems as if the progress of public information was eating away the ground of the prosecution. Since the commencement of the prosecution, this part of the libel has unluckily received the sanction of the legislature. In that interval our Catholic brethren have obtained that admission, which it seems it was a libel to propose; in what way to account for this, I am really at a loss. Have any alarms been occasioned by the emancipation of our Catholic brethren? has the bigoted malignity of any individuals been crushed? or has the stability of the government, or that of the country been weakened; or is one million of subjects stronger than four millions? Do you think that the benefit they received should be poisoned by the sting of vengeance? If you think so, you must say to them, "you have demanded emancipation, and you have got it; but we abhor your persons, we are outraged at your success, and we will stigmatize by a criminal prosecution the adviser of that relief which you have obtained from the voice of your country." I ask you, do you think, as honest men, anxious for the public tranquillity, conscious that there are wounds not yet completely cicatrized, that you ought to speak this language at this time, to men who are too much disposed to think that in this very emancipation they have been saved from their own Parliament by the humanity of their Sovereign? Or do you wish to prepare them for the revocation of these improvident concessions? Do you think it wise or humane at this moment to insult them, by sticking up in a pillory the man who dared to stand forth as their advocate? I put it to your oaths; do you think, that a blessing of that kind, that a victory obtained by justice over bigotry and oppression, should have a stigma cast upon it by an ignominious sentence upon men bold and honest enough to propose that measure? to propose the redeeming of religion

* The names of several Members of Parliament were included in the panel.

from the abuses of the church, the reclaiming of three millions of men from bondage, and giving liberty to all who had a right to demand it; giving, I say, in the so much censured words of this paper—giving “UNIVERSAL EMANCIPATION!” I speak in the spirit of the British law, which makes liberty commensurate with and inseparable from British soil; which proclaims even to the stranger and sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of UNIVERSAL EMANCIPATION. No matter in what language his doom may have been pronounced;—no matter what complexion incompatible with freedom—an Indian or an African sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down;—no matter with what solemnities he may have been devoted upon the altar of slavery; the first moment he touches the sacred soil of Britain, the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains, that burst from around him; and he stands redeemed, regenerated, and disenthralled, by the irresistible genius of UNIVERSAL EMANCIPATION.

[A sudden burst of applause from the Court and Hall, which was repeated for a considerable length of time, interrupted Mr. Curran. Silence being at length restored, he proceeded.]

Gentlemen, I am not such a fool as to ascribe any effusion of this sort to any merit of mine. It is the mighty theme, and not the inconsiderable advocate, that can excite interest in the hearer! What you hear is but the testimony which nature bears to her own character; it is the effusion of her gratitude to that Power which stamped that character upon her.

And permit me to say, that if my client had occasion to defend his cause by any mad or drunken appeals to extravagance or licentiousness, I trust in God I stand in that situation, that, humble as I am, he would not have resorted to me to be his advocate. I was not recommended to his choice by any connexion of principle or party, or even private friendship; and saying this, I cannot but add, that I consider not to be acquainted with such a man as Mr. Rowan a want of personal good fortune. But upon this great subject of reform and emancipation, there is a latitude and boldness of remark, justifiable in the people, and necessary to the defence of Mr. Rowan, for which the habits of professional

studies, and technical adherence to established forms, have rendered me unfit. It is, however, my duty, standing here as his advocate, to make some few observations to you which I conceive to be material.

Gentlemen, you are sitting in a country which has a right to the British constitution, and which is bound by an indissoluble union with the British nation. If you were now even at liberty to debate upon that subject; if you even were not by the most solemn compacts, founded upon the authority of your ancestors and of yourselves, bound to that alliance, and had an election now to make; in the present unhappy state of Europe, if you had been heretofore a stranger to Great Britain, you would now say, we will enter into society and union with you:—

“*Una salus ambobus erit, commune periculum.*”

But to accomplish that union, let me tell you, you must learn to become like the English people. It is vain to say you will protect their freedom, if you abandon your own. The pillar whose base has no foundation, can give no support to the dome under which its head is placed; and if you profess to give England that assistance which you refuse to yourselves, she will laugh at your folly, and despise your meanness and insincerity. Let us follow this a little further—I know you will interpret what I say with the candour in which it is spoken. England is marked by a natural avarice of freedom, which she is studious to engross and accumulate, but most unwilling to impart; whether from any necessity of her policy, or from her weakness, or from her pride, I will not presume to say, but so is the fact; you need not look to the east, nor to the west; you need only look to yourselves.

In order to confirm this observation, I would appeal to what fell from the learned Counsel for the Crown,—“that notwithstanding the alliance subsisting for two centuries past between the two countries, the date of liberty in one goes no farther back than the year 1784.”

If it acquired additional confirmation, I should state the case of the invaded American, and the subjugated Indian, to prove that the policy of England has ever been to govern her connexions more as colonies than as allies; and it must be owing to the great spirit indeed of Ireland, if she shall continue free. Rely upon it, she will ever have to hold her course against an adverse current; rely upon it, if the popular spring does not continue strong and elastic, a short

interval of debilitated nerve and broken force will send you down the stream again, and recommit you to the condition of a province.

If such should become the fate of your constitution, ask yourselves what must be the motive of your government? It is easier to govern a province by a faction, than to govern a co-ordinate country by co-ordinate means. I do not say it is now, but it will always be thought easiest by the managers of the day, to govern the Irish nation by the agency of such a faction, as long as this country shall be found willing to let her connexion with Great Britain be preserved only by her own degradation. In such a precarious and wretched state of things, if it shall ever be found to exist, the true friend of Irish liberty and British connexion will see, that the only means of saving both must be, as Lord Chatham expressed it, "the infusion of new health and blood into the constitution." He will see how deep a stake each country has in the liberty of the other; he will see what a bulwark he adds to the common cause, by giving England a co-ordinate and co-interested ally, instead of an oppressed, enfeebled, and suspected dependant; he will see how grossly the credulity of Britain is abused by those who make her believe that her interest is promoted by our depression; he will see the desperate precipice to which she approaches by such conduct; and with an animated and generous piety, he will labour to avert her danger.

But, Gentlemen of the Jury, what is likely to be his fate? The interest of the sovereign must be for ever the interest of his people, because his interest lives beyond his life:—it must live in his fame, it must live in the tenderness of his solicitude for an unborn posterity;—it must live in that heart-attaching bond, by which millions of men have united the destinies of themselves and their children with his, and call him by the endearing appellation of *King and Father of his people*.

But what can be the interest of such a government as I have described? Not the interest of the King, not the interest of the people; but the sordid interest of the hour; the interest in deceiving the one, and in oppressing and defaming the other; the interest of unpunished rapine and unmerited favour: that odious and abject interest, that prompts them to extinguish public spirit in punishment or in bribe, and to pursue every man, even to death, who has sense to see, and integrity and firmness enough to abhor and to oppose them. What, therefore, I say, will be the fate

of the man who embarks in an enterprize of so much difficulty and danger? I will not answer it.—Upon that hazard has my client put every thing that can be dear to man—his fame, his fortune, his person, his liberty, and his children; but with what event your verdict only can answer, and to that I refer your country.

There is a fourth point remaining. Says this paper, “For both these purposes, it appears necessary that provincial conventions should assemble, preparatory to the convention of the Protestant people. The delegates of the Catholic body are not justified in communicating with individuals, or even bodies, of inferior authority; and therefore an assembly of a similar nature and organization is necessary to establish an intercourse of sentiment, an uniformity of conduct, an united cause, and an united nation. If a convention on the one part does not soon follow, and is not soon connected with that on the other, the common cause will split into the partial interest; the people will relax into inattention and inertness; the union of affection and exertion will dissolve; and too probably some local insurrection, instigated by the malignity of our common enemy, may commit the character, and risk the tranquillity of the island, which can be obviated only by the influence of an assembly arising from, assimilated with the people, and whose spirit may be as it were knit with the soul of the nation; unless the sense of the Protestant people be on their part as fairly collected, and as judiciously directed; unless individual exertion consolidates into collective strength; unless the particles unite into one mass; we may perhaps serve some person or some party for a little, but the public not at all; the nation is neither insolent, nor rebellious, nor seditious; while it knows its rights, it is unwilling to manifest its powers; it would rather supplicate administration to anticipate revolution by well-timed reform, and to save their country in mercy to themselves.”

Gentlemen, it is with something more than common reverence, it is with a species of terror, that I am obliged to tread this ground.—But what is the idea, put in the strongest point of view?—We are willing not to manifest our powers, but to supplicate administration to anticipate revolution, that the legislature may save the country in mercy to itself.

Let me suggest to you, Gentlemen, that there are some circumstances, which have happened in the history of this

country, that may better serve as a comment upon this part of the case, than any I can make. I am not bound to defend Mr. Rowan, as to the truth or wisdom of the opinions he may have formed. But if he did really conceive the situation of the country such, as that the not redressing her grievances might lead to a convulsion; and of such an opinion not even Mr. Rowan is answerable here for the wisdom, much less shall I insinuate any idea of my own upon so awful a subject; but if he did so conceive the fact to be, and acted from the fair and honest suggestion of a mind anxious for the public good, I must confess, Gentlemen, I do not know in what part of the British constitution to find the principle of his criminality.

But, be pleased further to consider, that he cannot be understood to put the fact on which he argues on the authority of his assertion. The condition of Ireland was as open to the observation of every other man, as to that of Mr. Rowan: what, then, does this part of the publication amount to? In my mind, simply to this. The nature of oppression in all countries is such, that, although it may be borne to a certain degree, it cannot be borne beyond that degree. You find that exemplified in Great Britain; you find the people of England patient to a certain point, but patient no longer. That infatuated monarch, James II. experienced this. The time did come, when the measure of popular sufferings and popular patience was full; when a single drop was sufficient to make the waters of bitterness to overflow. I think this measure in Ireland is brimful at present; I think the state of the representation of the people in Parliament is a grievance; I think the utter exclusion of three millions of people is a grievance of that kind, that the people are not likely long to endure, and the continuation of which may plunge the country into that state of despair, which wrongs exasperated by perseverance never fail to produce. But to whom is even this language addressed? Not to the body of the people on whose temper and moderation, if once excited, perhaps not much confidence could be placed; but to that authoritative body, whose influence and power would have restrained the excesses of the irritable and tumultuous; and for that purpose expressly does this publication address the volunteers. We are told that we are in danger; I call upon you, the great constitutional saviours of Ireland, to defend the country to which you have given political existence, and to use whatever sanction your great name, your sacred character, and the weight you have in the community, must

give you, to repress wicked designs, if any there are. We feel ourselves strong. The people are always strong; the public chains can only be rivetted by the public hands. Look to those devoted regions of southern despotism; behold the expiring victim on his knees, presenting the javelin reeking with his blood, to the ferocious monster who returns it into his heart. Call not that monster the tyrant; he is no more than the executioner of that inhuman tyranny, which the people practice upon themselves, and of which he is only reserved to be a later victim than the wretch he has sent before. Look to a nearer country, where the sanguinary characters are more legible; whence you almost hear the groans of death and torture. Do you ascribe the rapine and murder in France, to the few names that we are execrating here? or do you not see that it is the frenzy of an infuriated multitude, abusing its own strength, and practising those hideous abominations upon itself? Against the violence of this strength, let your virtue and influence be our safeguard.

What criminality, Gentlemen of the Jury, can you find in this? what, at any time? but I ask you peculiarly at this momentous period, what guilt you can find in it? My client saw the scene of horror and blood which covers almost the face of Europe; he feared that causes, which he thought similar, might produce similar effects; and he seeks to avert those dangers by calling the united virtue and tried moderation of the country into a state of strength and vigilance. Yet this is the conduct which the prosecution of this day seeks to punish and stigmatize; and this is the language for which this paper is reprobated to-day, as tending to turn the hearts of the people against their Sovereign, and inviting them to overturn the constitution.

Let us now, Gentlemen, consider the concluding part of this publication. It recommends a meeting of the people, to deliberate on constitutional methods of redressing grievances. Upon this subject I am inclined to suspect that I have in my youth taken up crude ideas, not founded, perhaps, in law; but I did imagine, that when the Bill of Rights restored the right of petitioning for the redress of grievances, it was understood that the people might boldly state among themselves that grievances did exist; I did imagine it was understood that the people might lawfully assemble themselves in such manner as they might deem most orderly and decorous. I thought I had collected it from the greatest luminaries of the law. The power of petitioning seemed to me to imply the right of assembling for the purpose of de-

liberation. The law requiring a petition to be presented by a limited number, seemed to me to admit that the petition might be prepared by any number whatever, provided, in doing so, they did not commit any breach or violation of the public peace. I know that there has been a law passed in the Irish Parliament of last year, which may bring my former opinion into a merited want of authority. The law declares that no body of men may delegate a power to any smaller number, to act, think, or petition for them. If that law had not passed, I should have thought that the assembling by a delegate convention was recommended, in order to avoid the tumult and disorder of a promiscuous assembly of the whole mass of the people. I should have conceived, before that act, that any law to abridge the orderly appointment of the few to consult for the interest of the many, and thus force the many to consult by themselves, or not at all, would in fact be a law not to restrain but to promote insurrection. But that law has spoken, and my error must stand corrected.

Of this, however, let me remind you; you are to try this part of the publication by what the law was then, not by what it is now. How was it understood until last session of Parliament? You had, both in England and Ireland, for the last ten years, these delegated meetings. The volunteers of Ireland, in 1783, met by delegation; they framed a plan of parliamentary reform; they presented it to the representative wisdom of the nation; it was not received: but no man ever dreamed that it was not the undoubted right of the subject to assemble in that manner. They assembled by delegation at Dungannon; and to show the idea then entertained of the legality of their public conduct, that same body of volunteers was thanked by both Houses of Parliament, and their delegates most graciously received at the throne. The other day, you had delegated representatives of the Catholics of Ireland, publicly-elected by the members of that persuasion, and sitting in convention in the heart of your capital, carrying on an actual treaty with the existing government, and under the eye of your own Parliament, which was then assembled; you have seen the delegates from that convention carry the complaints of their grievances to the foot of the throne; from whence they brought back to that convention the auspicious tidings of that redress which they had been refused at home.

Such, Gentlemen, have been the means of popular communication and discussion, which until the last session have

been deemed legal in this country ; as happily for the sister kingdom, they are yet considered there.

I do not complain of this act as any infraction of popular liberty ; I should not think it becoming in me to express any complaint against a law, when once become such. I observe only, that one mode of popular deliberation is thereby taken utterly away, and you are reduced to a situation in which you never stood before. You are living in a country, where the constitution is rightly stated to be only ten years old ; where the people have not the ordinary rudiments of education. It is a melancholy story, that the lower orders of the people here have less means of being enlightened than the same class of people in any other country. If there be no means left by which public measures can be canvassed, what will be the consequence ? Where the press is free, and discussion unrestrained, the mind, by the collision of intercourse, gets rid of its own asperities ; a sort of insensible perspiration takes place in the body politic, by which those acrimonies, which would otherwise fester and inflame, are quietly dissolved and dissipated. But now, if any aggregate assembly shall meet, they are censured ; if a printer publishes their resolutions, he is punished. Rightly, to be sure, in both cases, for it has been lately done. If the people say, let us not create tumult, but meet in delegation, they cannot do it ; if they are anxious to promote parliamentary reform in that way, they cannot do it ; the law of the last session has for the first time declared such meetings to be a crime. What then remains ? The liberty of the press *only* ; that sacred palladium, which no influence, no power, no minister, no government, which nothing but the depravity, or folly, or corruption of a Jury, can ever destroy.—And what calamities are the people saved from, by having public communication left open to them ? I will tell you, Gentlemen, what they are saved from, and what the government is saved from ; I will tell you also to what both are exposed by shutting up that communication. In one case sedition speaks aloud, and walks abroad ; the demagogue goes forth ; the public eye is upon him ; he frets his busy hour upon the stage ; but soon either weariness, or bribe, or punishment, or disappointment, bears him down, or drives him off, and he appears no more. In the other case, how does the work of sedition go forward ? Night after night the muffled rebel steals forth in the dark, and casts another and another brand upon the pile, to which, when the hour of fatal maturity shall

arrive, he will apply the flame. If you doubt of the horrid consequences of suppressing the effusion even of individual discontent, look to those enslaved countries where the protection of despotism is supposed to be secured by such restraints. Even the person of the despot there is never in safety. Neither the fears of the despot, nor the machinations of the slave, have any slumber;—the one anticipating the moment of peril, the other watching the opportunity of aggression. The fatal crisis is equally a surprise upon both: the decisive instant is precipitated without warning, by folly on the one side, or by frenzy on the other; and there is no notice of the treason, till the traitor acts. In those unfortunate countries—one cannot read it without horror—there are officers, whose province it is, to have the water which is to be drunk by their rulers, sealed up in bottles, lest some wretched miscreant should throw poison into the draught.

But, Gentlemen, if you wish for a nearer and more interesting example, you have it in the history of your own Revolution; you have it at that memorable period, when the monarch found a servile acquiescence in the ministers of his folly; when the liberty of the press was trodden under foot; when venal sheriffs returned packed juries, to carry into effect those fatal conspiracies of the few against the many; when the devoted benches of public justice were filled by some of those foundlings of fortune, who, overwhelmed in the torrent of corruption at an early period, lay at the bottom, like drowned bodies, while soundness or sanity remained in them; but at length, becoming buoyant by putrefaction, they rose as they rotted, and floated to the surface of the polluted stream, where they were drifted along, the objects of terror, and contagion, and abomination.

In that awful moment of a nation's travail—of the last gasp of tyranny, and the first breath of freedom—how pregnant is the example! The press extinguished—the people enslaved—and the prince undone. As the advocate of society, therefore of peace, of domestic liberty, and the lasting union of the two countries, I conjure you to guard the liberty of the press, that great centinel of the state, that grand detector of public imposture: guard it, because, when it sinks, there sinks with it, in one common grave, the liberty of the subject, and the security of the crown.

Gentlemen, I am glad that this question has not been brought forward earlier; I rejoice, for the sake of the Court, of the Jury, and of the public repose, that this question has

not been brought forward till now. In Great Britain, analogous circumstances have taken place. At the commencement of that unfortunate war which has deluged Europe with blood, the spirit of the English people was tremblingly alive to the terror of French principles; at that moment of general paroxysm, to accuse was to convict. The danger loomed larger to the public eye, from the misty region through which it was surveyed. We measure inaccessible heights by the shadows which they project, where the lowness and the distance of the light form the length of the shade.

There is a sort of aspiring and adventurous credulity, which disdains assenting to obvious truths, and delights in catching at the improbability of circumstances, as its best ground of faith. To what other cause, Gentlemen, can you ascribe, that in the wise, the reflecting, and the philosophic nation of Great Britain, a printer has been gravely found guilty of a libel, for publishing those resolutions to which the present Minister of that kingdom had actually subscribed his name? To what other cause can you ascribe, what in my mind is still more astonishing, in such a country as Scotland—a nation cast in the happy medium between the spiritless acquiescence of submissive poverty, and the sturdy credulity of pampered wealth; cool and ardent; adventurous and persevering; winging her eagle flight against the blaze of every science, with an eye that never winks, and a wing that never tires; crowned as she is with the spoils of every art, and decked with the wreath of every muse, from the deep and scrutinizing researches of her Hume, to the sweet and simple, but not less sublime and pathetic morality of her Burns—how, from the bosom of a country like that,* genius, and character, and talents, should be banished to a distant barbarous soil; condemned to pine under the horrid communion of vulgar vice and base-born profligacy, for twice the period that ordinary calculation gives to the continuance of human life!

But I will not further press any idea that is painful to me, and I am sure must be painful to you: I will only say, you have now an example, of which neither England nor Scotland had the advantage; you have the example of the panic, the infatuation, and the contrition of both. It is now for you to decide, whether you will profit by their experience of idle panic and idle regret; or whether you meanly prefer to palliate a servile imitation of their frailty, by a paltry

* Alluding to Scotland, where sentence of transportation had been passed upon Mr. Meir, and others.

affectation of their repentance. It is now for you to show, that you are not carried away by the same hectic delusions, to acts, of which no tears can wash away the fatal consequences, or the indelible reproach.

Gentlemen, I have been warning you by instances of public intellect suspended or obscured;—let me rather excite you by the example of that intellect recovered and restored. In that case which Mr. Attorney-General has cited himself—I mean that of the trial of Lambert, in England—is there a topic of invective against constituted authorities, is there a topic of abuse against every department of British government, that you do not find in the most glowing and unqualified terms in that publication, for which the printer of it was prosecuted, and acquitted by an English Jury? See, too, what a difference there is between the case of a man publishing his own opinion of facts, thinking that he is bound by duty to hazard the promulgation of them, and without the remotest hope of any personal advantage; and that of a man who makes publication his trade. And saying this, let me not be misunderstood. It is not my province to enter into any abstract defence of the opinions of any man upon public subjects. I do not affirmatively state to you that these grievances, which this paper supposes, do in fact exist; yet I cannot but say, that the movers of this prosecution have forced this question upon you. Their motives and their merits, like those of all accusers, are put in issue before you; and I need not tell you how strongly the motive and merits of any informer ought to influence the fate of his accusation.

I agree most implicitly with Mr. Attorney-General, that nothing can be more criminal than an attempt to work a change in the government by armed force; and I entreat that the Court will not suffer any expression of mine to be considered as giving encouragement or defence to any design to excite disaffection, to overawe or to overturn the government. But I put my client's case upon another ground:—if he was led into an opinion of grievances, where there were none—if he thought there ought to be a reform, where none was necessary—he is answerable only for his intention. He can be answerable to you in the same way only that he is answerable to that God, before whom the accuser, the accused, and the judge, must appear together; that is, not for the clearness of his understanding, but for the purity of his heart.

Gentlemen, Mr. Attorney-General has said, that Mr. Rowan

did by this publication (supposing it be his) recommend, under the name of equality, a general indiscriminate assumption of public rule, by every the meanest person in the state. Low as we are, in point of public information, there is not, I believe, any man who thinks for a moment, that does not know, that all which the great body of the people, of any country, can have from any government, is a fair encouragement to their industry, and protection for the fruits of their labour. And there is scarcely any man, I believe, who does not know, that if a people could become so silly as to abandon their stations in society, under pretence of governing themselves, they would become the dupes and the victims of their own folly. But does this publication recommend any such infatuated abandonment, or any such desperate assumption? I will read the words which relate to that subject:—"By liberty, we never understood unlimited freedom; nor by equality, the levelling of property, or the destruction of subordination." I ask you, with what justice, upon what principle of common sense, you can charge a man with the publication of sentiments the very reverse of what his words avow; and that, when there is no collateral evidence, where there is no foundation whatever, save those very words, by which his meaning can be ascertained? or, if you do adopt an arbitrary principle, of imputing to him *your* meaning, instead of his own, what publication can be guiltless or safe? It is a sort of accusation that I am ashamed and sorry to see introduced in a Court acting on the principles of the British constitution.

In the bitterness of reproach it was said, "Out of thine own mouth will I condemn thee;" from the severity of justice I demand no more. See if in the words that have been spoken, you can find matter to acquit, or to condemn:—"By liberty, we never understood unlimited freedom; nor by equality, the levelling of property, or the destruction of subordination.—This is a calumny invented by that faction, or that gang, which misrepresents the King to the people, and the people to the King; traduces one half of the nation, to cajole the other; and, by keeping up distrust and division, wishes to continue the proud arbitrator of the fortune and fate of Ireland." Here you find that meaning disclaimed as a calumny, which is artfully imputed as a crime.

I say, therefore, Gentlemen of the Jury, as to the four parts into which the publication must be divided, I answer thus. It calls upon the volunteers. Consider the time, the

danger; the authority of the Prosecutors themselves for believing that danger to exist; the high character, the known moderation, the approved loyalty of that venerable institution; the similarity of the circumstances between the period at which they were summoned to take arms, and that in which they have been called upon to reassume them. Upon this simple ground, Gentlemen, you will decide, whether this part of the publication was libellous and criminal, or not.

As to reform, I could wish to have said nothing upon it: I believe I have said enough. If Mr. Rowan, in disclosing that opinion, thought the state required it, he acted like an honest man. For the rectitude of the opinion he was not answerable; he discharged his duty in telling the country that he thought so.

As to the emancipation of the Catholics, I cannot but say that Mr. Attorney-General did very wisely in keeping clear of that subject. Yet, Gentlemen, I need not tell you how important a figure it was intended to make upon the scene; though, from unlucky accidents, it has become necessary to expunge it during the rehearsal.*

Of the concluding part of this publication, the convention which it recommends, I have spoken already. I wish not to trouble you with saying more upon it. I feel that I have already trespassed much upon your patience. In truth, upon a subject embracing such a variety of topics, a rigid observance either of conciseness or arrangement could perhaps scarcely be expected. It is, however, with pleasure I feel I am drawing to a close, and that only one question remains, to which I would beg your attention.

Whatever, Gentlemen, may be your opinion of the meaning of this publication, there yet remains a great point for you to decide upon; namely, whether, in point of fact, this publication be imputable to Mr. Rowan, or not? whether he did publish it, or not? Two Witnesses are called to that fact: one of the name of Lyster, and the other of the name of Morton. You must have observed that Morton gave no evidence upon which that paper could have even been read; he produced no paper, he identified no paper; he said that he got some paper, but that he had given it away. So that, in point of law, there was no evidence given by him, on which it could have gone to a Jury; and therefore, it turns

* The legislature had, between the period of the publication and prosecution, by the recommendation of the Crown, removed the principal grievances of the Catholic code.

entirely upon the evidence of the other Witness. He has stated that he went to a public meeting, in a place where there was a gallery crowded with spectators; and that he there got a printed paper, the same which has been read to you. I know you are well acquainted with the fact, that the credit of every Witness must be considered by, and rest with the Jury. They are the sovereign judges of that; and I will not insult your feelings, by insisting on the caution with which you should watch the testimony of a witness that seeks to affect the liberty, or property, or character, of your fellow-citizens. Under what circumstances does this evidence come before you? The Witness says he has got a commission in the army, by the interest of a lady, from a person then high in administration. He told you that he made a memorandum upon the back of that paper, it being his general custom, when he got such papers, to make an indorsement upon them; that he did this from mere fancy; that he had no intention of giving any evidence on the subject; he "took it" "with no such view." There is something whimsical enough in this curious story. Put his credit upon the positive evidence adduced to his character. Who he is I know not—I know not the man; but his credit is impeached. Mr. Blake was called; he said he knew him. I asked him, "Do you think, sir, that Mr. Lyster is or is not a man deserving credit upon his oath?" If you find a verdict of conviction, it can be only upon the credit of Mr. Lyster. What said Mr. Blake? Did he tell you that he considered him a man to be believed upon his oath? He did not attempt to say that he did. The best he could say was, that he "would hesitate." Do you believe Blake? Have you the same opinion of Lyster's testimony that Mr. Blake has? Do you know Lyster? If you do know him, and know that he is credible, your knowledge should not be shaken by the doubts of any man. But if you do not know him, you must take his credit from an unimpeached Witness, swearing that he would hesitate to believe him. In my mind, there is a circumstance of the strongest nature, that came out from Lyster, on the table. I am aware that a most respectable man, if impeached by surprise, may not be prepared to repel a wanton calumny by contrary testimony: but was Lyster unapprized of this attack upon him? What said he? "I knew that you had Blake to examine against me; you have brought him here for that purpose." He knew the very Witness that was to be produced against him, he knew that his credit was impeached, and yet he produced no person to support that

credit. What said Mr. Smyth? "From my knowledge of him, I would not believe him upon his oath."

But what said Mrs. Hatchell? Was the production of that Witness a surprise upon Mr. Lyster? Her cross-examination shows the fact to be the contrary. The learned Counsel, you see, was perfectly apprized of a chain of private circumstances to which he pointed his questions: this lady's daughter was married to the elder brother of the Witness Lyster. Did he know these circumstances by inspiration? no; they could come only from Lyster himself. I insist, therefore, that the gentleman knew his character was to be impeached, his Counsel knew it, and not a single Witness has been produced to support it. Then consider, Gentlemen, upon what ground can you find a verdict of conviction against my client, when the only Witness produced to the fact of publication is impeached, without even an attempt to defend his character? Many hundreds, he said, were at that meeting. Why not produce one of them, to swear to the fact of such a meeting? One he has ventured to name; but he was certainly very safe in naming a person, who he has told you is not in the kingdom, and could not therefore be called to confront him.

Gentlemen, let me suggest another observation or two, if still you have any doubt as to the guilt or innocence of the Defendant. Give me leave to suggest to you, what circumstances you ought to consider, in order to found your verdict. You should consider the character of the person accused; and in this your task is easy. I will venture to say, there is not a man in this nation more known than the gentleman who is the subject of this prosecution; not only by the part he has taken in public concerns, and which he has taken in common with many; but still more so, by that extraordinary sympathy for human affliction, which, I am sorry to think, he shares with so small a number. There is not a day that you hear the cries of your starving manufacturers in your streets, that you do not also see the advocate of their sufferings—that you do not see his honest and manly figure, with uncovered head, soliciting for their relief; searching the frozen heart of charity, for every string that can be touched by compassion, and urging the force of every argument and every motive, save that which his modesty suppresses—the authority of his own generous example. Or if you see him not there, you may trace his steps to the private abode of disease, and famine, and despair; the messenger of heaven, bringing with him food, and medicine, and consolation. Are

these the materials of which you suppose anarchy and public rapine to be formed? Is this the man, on whom to fasten the abominable charge of goading on a frantic populace to mutiny and bloodshed? Is this the man, likely to apostatize from every principle that can bind him to the state—his birth, his property, his education, his character, and his children? Let me tell you, Gentlemen of the Jury, if you agree with his Prosecutors, in thinking that there ought to be a sacrifice of such a man, on such an occasion, and upon the credit of such evidence, you are to convict him—never did you, never can you give a sentence, consigning any man to public punishment, with less danger to his person or to his fame: for where could the hireling be found to fling contumely or ingratitude at his head, whose private distresses he had not endeavoured to alleviate, or whose public condition he had not laboured to improve?

I cannot, however, avoid averting to a circumstance that distinguishes the case of Mr. Rowan, from that of the late sacrifice in a neighbouring kingdom.*

The severer law of that country, it seems—and happy for them that it should—enables them to remove from their sight the victim of their infatuation. The more merciful spirit of our law deprives you of that consolation; his sufferings must remain for ever before our eyes, a continual call upon your shame and your remorse. But those sufferings will do more; they will not rest satisfied with your unavailing contrition, they will challenge the great and paramount inquest of society; the man will be weighed against the charge, the witness, and the sentence; and impartial justice will demand, why has an Irish Jury done this deed? The moment he ceases to be regarded as a criminal, he becomes of necessity an accuser: and let me ask you, what can your most zealous defenders be prepared to answer to such a charge? When your sentence shall have sent him forth to that stage, which guilt alone can render infamous, let me tell you, he will not be like a little statue upon a mighty pedestal, diminishing by elevation; but he will stand a striking and imposing object upon a monument, which, if it does not (and it cannot) record the atrocity of his crime, must record the atrocity of his conviction. Upon this subject, therefore, credit me when I say, that I am still more anxious for you, than I can possibly be for him. I cannot but feel the peculiarity of your situation. Not the Jury of his own choice, which the law of

* Scotland, from whence Messrs. Muir, Palmer, and others, were transported for sedition.

England allows, but which ours refuses; collected in that box by a person, certainly no friend to Mr. Rowan, certainly not very deeply interested in giving him a very impartial Jury. Feeling this, as I am persuaded you do, you cannot be surprised, however you may be distressed, at the mournful presage, with which an anxious public is led to fear the worst from your possible determination. But I will not, for the justice and honour of our common country, suffer my mind to be borne away by such melancholy anticipation. I will not relinquish the confidence that this day will be the period of his sufferings; and, however mercilessly he has been hitherto pursued, that your verdict will send him home to the arms of his family, and the wishes of his country. But if, which heaven forbid! it hath still been unfortunately determined, that because he has not bent to power and authority, because he would not bow down before the golden calf, and worship it, he is to be bound and cast into the furnace; I do trust in God, that there is a redeeming spirit in the constitution, which will be seen to walk with the sufferer through the flames, and to preserve him unhurt by the conflagration.

[Loud applause followed the conclusion of this speech; and upon leaving the Court, Mr. Curran was drawn home by the populace, who took the horses from his carriage.]

COURT OF KING'S BENCH, TUESDAY, FEB. 4th, 1794.

The Recorder applied to set aside the verdict given in the case of Archibald Hamilton Rowan, Esq. The application was grounded upon different affidavits sworn in Court, charging—1st, One of the *Jurors* with a declaration against Mr. Rowan, previous to trial.—2dly, Partiality in one of the *High Sheriffs*.—3dly, That John Lyster, the *principal evidence*, was not to be believed upon his oath; he, as the affidavits stated, having been guilty of perjury.—And, 4thly, upon which the learned Gentleman rested his case,—The misdirection of the Court.

Mr. Curran followed on the same side, and said:—

It was an early idea, that a verdict in a criminal case could not be set aside *inconsulto rege*; but the law had stood otherwise, without a doubt to impeach its principle, for the last two reigns. Common sense would say, that the discretion of the Court should go at least as far in criminal as in civil cases,

and very often to go no further would be to stop far short of what was right, as in those great questions where the prosecution may be considered either as an attempt to extinguish liberty, or as a necessary measure for the purpose of repressing the virulence of public licentiousness and dangerous faction; where there can be no alternative between guilt or martyrdom; where the party prosecuted must either be considered as a culprit sinking beneath the punishment of his own crimes, or a victim sacrificed to the vices of others. But when it clearly appears that the party has fallen a prey to persecuting combination, there remains but one melancholy question, *how far did that combination reach?*

There have been two cases lately decided in this very Court; the King and Pentland, where the motion was made and refused; and the King and Bowen, where it was granted; both of which show, that captious sophistry, and technical pedantry, had here, as well as in England, given way to liberal and rational inquiry; and that the Court would not now, in their discretion, refuse a motion of this kind, unless they could at the same time lay their hands upon their hearts, and say, they believed in their consciences that justice had been done: such was the manly language of one of their Lordships (Mr. Justice Downes); and such the opinion of the Court on a former occasion.

He then cited 7 Modern 57. as referred to in Bacon, tit. Trial, to show, that where there was good ground of challenge to a Juror, not known at the trial, it was sufficient cause for setting aside the verdict.

In England they have a particular Act of Parliament, entitling the party to strike a Special Jury to try the fact, and then he has time between the striking and the trial to question the propriety of that Jury: here my client had no previous information, till the instant of trial, who his Jurors were to be.

There are certain indulgences granted at times, perhaps by the connivance of humanity, which men, who are not entitled to demand them in an open Court, obtain, nevertheless, by sidelong means; and perhaps the little breach which affords that light to the mind of the man accused, is a circumstance concerning which the Court would feel pain, even if called upon to say, that it should in all cases be prevented: but to overturn principles and authorities, for the purpose of oppressing the subject, is what this Court will never do.

The first of the affidavits I shall consider, is that of the Traverser. I do not recollect whether it states the Sheriff, in

avowed terms, to be an emissary or a hireling agent of the Castle, therefore I do not state it from the affidavit; but he swears, that he does believe that he did labour to bring into the box a Jury full of prejudices, and of the blackest impressions; instead of having, as they ought, fair and impartial minds, and souls like white paper.

This Sheriff now stands in Court; he might have denied it, if he would; he had an opportunity of answering it; but he has left it an undenied assertion—he was not certainly obliged to answer it; for no man is bound to convict himself. But there is a part of that charge which amounts, at least, to this, “Your heart was poisoned against me, and you collected those to be my judges, who, if they could not be under the dominion of bad dispositions, might be at least the dupes of good.” The most favourable thing that can be said is this, you sought to bring against me honest prejudices, but you brought against me wicked ones. The very general charge, that he sought for persons who he knew were most likely to bring prejudices with them into the jury-box, is a part of the affidavit that it was incumbent on him to answer if he could.

I do not contend, that what is charged in the affidavit would have been a ground of principal challenge to the array; but I hold it to be the better opinion, that a challenge to the array for favour does well lie in the mouth of the Defendant. The ancient notion was, you shall not challenge the array for favour, where the King is a party; the King only can challenge for favour; for the principle was, that every man ought to be favourable to the Crown; but, thank God, the advancement of legal knowledge, and the growing understanding of the age, have dissipated such illiberal and mischievous conceptions.

But I am putting too much stress upon such technical, discarded, and antiquated scruples. The true question has been already stated from the authority of Mr. Justice Downes, and that question is—“Has justice been done?”

It is a matter upon which scarce any understanding would condescend to hesitate, whether a man had been fairly tried, whose triors had been collected together by an avowed enemy, whose conduct had been such, as to leave no doubt that he had purposely brought prejudiced men into the box.

In every country, where freedom obtains, there must subsist parties. In this country, and Great Britain, I trust there never will be a time when there shall not be men found

zealous for the actual government of the day. So, on the other hand, I trust, there will never be a time, when there will not be found men zealous and enthusiastic in the cause of popular freedom, and of the public rights. If, therefore, a person in public office suffers his own prejudices, however honestly anxious he may be for a prosecution carried on by those to whom he is attached, to influence him so far as to choose men, to his knowledge, devoted to the principles he espouses, it is an error which a High Court of Judicature, seeking to do right justice, will not fail to correct.

A Sheriff, in such a case, might not have perceived the partiality of his conduct, because he was surveying through the medium of prejudice and habitual corruption: but it is impossible to think that this Sheriff meant to be impartial; it is an interpretation more favourable than his conduct will allow of; if he deserves any credit at all, it is not answering the charge made against him; at the same time, that, by not answering it, he has left unimpeached the credit of the charge itself.

[The Sheriff here tendered some form of an affidavit, which the Court would not allow to be sworn or read, for the same reason, that those sworn and tendered by the Defendant's Counsel, had been before refused. Mr. Curran, however, consented to its being sworn and read: which the Attorney-General declined, being unacquainted with the contents, and uninstructed as to its tendency: it therefore was not sworn.]

Mr. Curran proceeded:—

Is this then the way to meet a fair application to the Court, to see whether justice has been done between the subject and the Crown. I offer it again, let the affidavit be read. And let me remind the Court, that the great reason for sending a cause back to a Jury, is, that new light must be shed upon it; and how must your Lordships feel, when you see that indulgence granted to the conscience of the Jury, denied to the Court?

Mr. Attorney-General.—I am concerned that any lawyer should make a proposition in the manner Mr. Curran has done; he proposes to have an affidavit read, provided we consent that others, which the Court have already refused, should be now read.* I did not hear it offered; but is it to be presumed I will consent to have an affidavit read, about which I know nothing? Yesterday, without any com-

* Mr. Attorney-General, it may be proper to observe, mistook Mr. Curran's proposal, which was an unqualified offer to have Mr. Giffard's affidavit read.

munication with a human being, I did say, that I conceived it unnecessary to answer any of the affidavits, thinking that they were not sufficient to ground the application made to the Court. And it is presumed I am so mad as to consent to the reading of affidavits which I have not seen.

[Some altercation here took place, when Lord Clonmell, Chief Justice, interposed, and said, that the Counsel had certainly a right to argue it upon the ground that the Sheriff was biassed, and did return a Jury prejudiced against the Traverser.]

Mr. Curran was about to observe upon the expression of one of the Jury, sworn to in another affidavit, "that there would be no safety in the country, until the Defendant was either hanged or banished;" when it was asked by the Court, whether the time of its coming to the knowledge of the Traverser, that the Sheriff was biassed, was stated in his affidavit?

Mr. Curran answered,—He was in prison, and could not have the attendance of those Counsel whose assistance he had in Court; and, besides, from the nature of the circumstances, it was impossible he could have been sufficiently apprized of its consequences, for he saw not that panel till the day of the trial, when he could not have had time to make any inquiry into the characters, dispositions, or connexions of the Jury. Mr. Curran than reverted to his argument on the expression of the Juror.

If triors had been appointed to determine the issue, favourable or not, what would have been their finding? Could they say upon their oaths, that he was not unfavourable to that party against whom he could make such a declaration?

Favour is not cause of principal challenge, which, if put upon a pleading, would conclude the party. Favour is that which makes the man, in vulgar parlance, unfit to try the question. And as to the time these facts came to his knowledge, he has sworn that he was utterly ignorant of them at the time of his coming into Court to take his trial.

I will not glance at the character of any absent noble person, high in office; but let it be remembered, that it is a government prosecution, and that the Witness has, from a low and handicap situation, scraped himself into preferment, perhaps—for I will put the best construction upon it—by offering himself as a man honestly anxious for the welfare of his country; in short, it is too obvious to require any comment, what the nature of the whole transaction has been, that he had got his commission as a compensation, *pro labore*

impendendo, and came afterwards into Court, to pay down the stipulated purchase.

Had this then been an unbiassed Jury, was there not something in all these circumstances, that might have afforded more deliberation than that of one minute per man, for only so long was the Jury out ; and had this been a fair Witness, would he have lain down under a charge, which if true, ought not only to damn this verdict, but his character, for ever. What would a corps of brother officers think of a person, charged upon oath with the commission of two wilful perjuries, and that charge remaining undenied ? Here is an undenied charge, in point of fact ; and although I do not call upon the Court to say, that this is a guilty and abominable person, yet surely the suspicion is strongly so, and must be considered. This was at least a verdict, where the evidence went to the Jury, under slighter blemishes than it will if my client has the advantage of another trial ; for then he will put out of the power of man to doubt, that this Witness has been perjured ;—this Witness, who has had notice, both here and at the trial, of the aspersions on his character, and yet has not called a human being to say that he entertained a contrary opinion of him.

Was he known any where ? Did he crawl unobserved to the Castle ? Was it without the aid or knowledge of any body, that that gaudy plumage grew on him, in which he appeared in Court ? If he was known for any thing else than what he is stated to be, it was, upon that day, almost a physical impossibility, in a Court-house, which almost contained the country, not to have found some person, to give some sort of testimony, respecting his general character. For though no man is bound to be ready at all times to answer particular charges, yet every man is supposed to come with his public attestation of common and general probity. But he has left that character, upon the merits of which my client is convicted, unsupported, even by his own poor corporal swearing. You are called upon, then, to say, whether upon the evidence of a being of this kind, such a man as that is to be convicted, and sentenced to punishment, in a country where humanity is the leading feature, even of the criminal law.

Mr. Curran then observed upon the second witness.—A man coming to support the credit of another collaterally, is himself particularly pledged ; then what was his testimony ? He did not know whether Mr. Giffard was concerned in the newspaper !! And now, you have the silence of Giffard

himself, in not answering Mr. Rowan's affidavit, to contradict that. And, next, he did not know whether his own cousin-german was the relation of their common uncle!! I call upon you, my Lords, in the name of sacred justice and your country, to declare whether the melancholy scenes and murderous plots of the Meal-tub and the Rye-house are to be acted over again? And whether every Titus Oates that can be found is to be called into your Courts, as the common voucher of base and perjured accusation?

He then proceeded to another ground; namely, that the direction of the Court was not, as he conceived, agreeable to the law of Ireland. The defence of my client (he added) was rested upon this—that there was no evidence of the fact of publication; upon the incredibility of the fact, and the circumstances of discredit in the character of the Witness; yet the Court made this observation:—"Gentlemen, it scarcely lies in the mouth of Mr. Rowan to build a defence upon objections of this kind to the characters of witnesses, because the fact was public; there were many there; the room was crowded below, the gallery was crowded above; and the publicity of the fact enabled him to produce a number of witnesses to falsify the assertion of the Prosecutor, if in fact it could be falsified!" Is that the principle of criminal law? Is it a part of the British law, that the fate of the accused shall abide—not the positive establishment of guilt by the Prosecutor, but—the negative proof of innocence by himself? Why has it been said in foolish old books, that the law supposes the innocence of every man, till the contrary is proved? How has it happened that that language has been admired for its humanity, and not laughed at for its absurdity, in which the prayers of the Court are addressed to heaven, for the safe deliverance of the man accused? How comes it that so much public time is wasted in going into evidence of guilt, if the bare accusation of a man did call upon him to go into evidence of his innocence? The force of the observation is this—Mr. Rowan impeaches the credit of a witness, who has sworn that he saw him present, and doing certain acts, at a certain meeting; but it is asked, has he substantiated that discredit, by calling all the persons who were present to prove his absence from that meeting, which is only stated to have existed by a witness whom he alleges to have perjured himself? I call upon the example of judicial character; upon the faith of that high office, which is never so dignified as when it sees its errors and corrects

them, to say, that the Court was for a moment led away, so as to argue from the most seductive of all sophisms, that of the *positio principii*.

See what meaning is to be gathered from such words: we say the whole that this man has sworn, is a consummate lie; show it to be so, says the Court, by admitting a part of it to be true. It is a false swearing; it is a conspiracy of two witnesses against this Defendant: well, then, it lies upon him to rebut their testimony, by proving a great deal of it to be true! Is conjecture, then, in criminal cases, to stand in the place of truth and demonstration? Why were not some of those—(I will strip the case of the honour of names which I respect)—but why were not some of those, who knew that these two persons were to be brought forward, and that there were to be objections to their credit—if, as it is stated, it happened in the presence of a public crowd, rushing in from motives of curiosity—why where not numbers called on to establish that fact? On the contrary, the Court have said to this effect:—Mr. Rowan, you say you were not there; produce any of those persons with whom you were there, to swear you were not there! You say it was a perjury; if so, produce the people that he has perjured himself, in swearing to have been there! But as to your own being there, you can easily show the contrary of that, by producing some man that you saw there! You say you were not there? Yes. There were one hundred and fifty persons there: now produce any one of those to swear they saw you there!

It is impossible for the human mind to suppose a case, in which infatuation must have prevailed in a more progressive degree, than when a Jury are thus, in fact, directed to receive no refutation nor proof of the perjury of the Witness, but only of his truth. We will permit you to deny the charge, by establishing the fact: we will permit you to prove that they swore falsely to your being there, by producing another Witness to prove to a certainty that you were there.—

[Mr. Curran was here interrupted by Lord Chief Justice Clonmell.]

Lord Clonmell.—The reasoning of the Court was strong upon that point: this is a transaction stated by the Witness to have happened in open day, in a crowded assembly, in the capital, amidst a number of persons dressed in the uniform of Hamilton Rowan. There has been nothing suddenly brought forward to surprise the Traverser; yet what has he done? did he offer, as in the common course, to prove an

alibi? It is stated to be at such a day—the Witness swears at such an hour; the place is sworn to have been full of people, of Mr. Rowan's friends; but if there was even a partial assembly, it would be easy still to produce some one of those persons who were present to say, that the fact did not happen which has been sworn to; or if you say Mr. Rowan was not there, it is easier still to prove it, by showing where he was; as thus: I breakfasted with him—I dined with him—I supped with him; he was with me—he was not at Pardon's; disprove that assertion, by proving an affirmation inconsistent with it.

Mr. Curran.—I beg leave to remind the Court of what fell from it. “He may call” (said the Court) “any of those persons; he has not produced one of them;” upon this, I think, a most material point does hang. “He might have called them, for they were all of his own party.”

Lord Clonmell.—That is, if there were such persons there; or if there was no meeting at all, he might have proved that.

Mr. Curran.—There was no such idea put to the Jury, as whether there was a meeting or not: it was said they were all of his party, he might have produced them; and the non-production of them was a “volume of evidence” upon that point. No refinement can avoid this conclusion, that even as your Lordship now states the charge, the fate of the man must depend upon proving the negative.

Until the credit of the Witness was established, he could not be called upon to bring any contrary evidence. What does the duty of every Counsel dictate to him, if the case is not made out by his adversary or Prosecutor? Let it rest; the Court is bound to tell the Jury so, and the Jury are bound to find him not guilty. It is a most unshaken maxim, that *nemo tenetur prodere se ipsum*. And it would indeed be a very inquisitorial exercise of power, to call upon a man to run the risk of confirming the charge, under the penalty of being convicted by *nil dicit*. Surely, at the criminal side of this Court, as yet there has been no such judgment pronounced. It is only when the party stands mute of malice, that such extremes can be resorted to. I never before heard an intimation from any Judge to a Jury, that bad evidence, liable to any and every exception, ought to receive a sanction from the silence of the party. The substance of the charge was neither more nor less than this: that the falsehood of the evidence shall receive support and credit from the silence of the man accused. With anxiety

for the honour and religion of the law, I demand it of you, must not the Jury have understood that this silence was evidence to go to them? is the meaning contained in the expression, "a volume of evidence," only insinuation? I do not know where any man could be safe; I do not know what any man could do to screen himself from prosecution; I know not how he could be sure, even when he was at his prayers before the throne of heaven, that he was not passing that moment of his life, on which he was to be charged with the commission of some crime, to be expiated to society by the forfeiture of his liberty or of his life; I do not know what shall become of the subject, if a Jury are to be told, that the silence of the man charged is a "volume of evidence" that he is guilty of the crime:—where is it written? I know there is a place where vulgar frenzy cries out, that the public instrument must be drenched in blood; where defence is gagged, and the devoted wretch must perish. But even there, the victim of such tyranny is not made to fill, by voluntary silence, the defects of his accusation; for his tongue is tied, and therefore no advantage is taken of him by construction; it cannot be there said that his not speaking is a volume of evidence to prove his guilt.

But, to avoid all misunderstanding, see what is the force of my objection:—is it, that the charge of the Court cannot receive a practicable interpretation, that may not terrify men's minds with ideas such as I have presented? No—I am saying no such thing: I have lived too long, and observed too much, not to know, that every word in a phrase is one of the feet upon which it runs, and how the shortening or lengthening of one of those feet will alter the progress or direction of its motion. I am not arguing that the charge of the Court cannot by any possibility be reconciled to the principles of law; I am agitating a more important question; I am putting it to the conscience of the Court, whether a Jury may not have probably collected the same meaning from it, which I have affixed to it; and whether there ought not to have been a volume of explanation, to do away the fatal consequences of such mistake.

On what sort of a case am I now speaking? on one of that kind, which it is known has been beating the public heart for many months; which, from a single being in society, has scarcely received a cool or tranquil examination. I am making that sort of application, which the expansion of liberal reason and the decay of technical bigotry have made a favoured application.

In earlier times, it might have been thought sacrilege to have meddled with a verdict once pronounced; since then, the true principles of justice have been better understood; so that now, the whole wisdom of the whole Court will have an opportunity of looking over that verdict, and setting right the mistake which has occasioned it.

Mr. Curran made other observations, as well in corroboration of his own remarks, as in answer to the opposite Counsel, of which it is impossible to give an exact detail; and concluded:—

You are standing on the scanty isthmus that divides the great ocean of duration—on one side of the past, on the other of the future; a ground, that while you yet hear me, is washed from beneath our feet. Let me remind you, my Lords, while your determination is yet in your power, “*Dum versatur adhuc intra penetralia Vestæ*”—that on that ocean of future you must set your judgment afloat. And future ages will assume the same authority which you have assumed; posterity feel the same emotions which you have felt, when your little hearts have beaten, and your infant eyes have overflowed, at reading the sad history of the sufferings of a Russel or a Sidney.

[The Court refused the application to set aside the verdict; and Mr. Rowan was sentenced to pay a fine of £500., to be imprisoned two years, and to give security for good behaviour, himself in £2000. and two sureties in £1000. each.]

SPEECH,

COURT OF EXCHEQUER, DUBLIN, FEBRUARY 4, 1805;

IN

THE KING

AGAINST

THE HON. MR. JUSTICE JOHNSON.

By an Act of Parliament passed in 1804, entitled, “*An Act to render more easy the apprehending and bringing to trial, offenders escaping from one part of the United Kingdom to the other, and also from one country to another*.”—

It is enacted, "That for the remedy of the like inconvenience, by the escape into Ireland of persons guilty of crimes in England or Scotland respectively, be it further enacted, that, from and after the 1st day of August, 1804, if any person or persons, against whom a warrant shall be issued by any of the Judges of his Majesty's Court of King's Bench, or of the Courts of Great Sessions in Wales, or any Justice of Oyer and Terminer or Gaol Delivery, or any Justice or Justices of the Peace of any county, stewartry, riding, division, city, liberty, town, or place, within England or Scotland respectively, or other persons having authority to issue the same within England or Scotland respectively, for any crime or offence against the laws of England or Scotland respectively, shall escape, go into, reside, or be in any place of that part of the United Kingdom called Ireland, it shall and may be lawful for any Justice of the Peace of the county or place in Ireland, whither or where such person or persons shall escape, go into, or reside, or be, to indorse his name on such warrant, which warrant so indorsed shall be a sufficient authority to the person or persons bringing such warrant, and to all persons to whom such warrant was originally directed, and also to all Sheriff's-officers, constables, and other peace-officers, of the county or place in Ireland where such warrant shall be so indorsed, to execute the said warrant in the county or place in Ireland where it is so indorsed, by apprehending the person or persons against whom such warrant may be granted, and to convey him, her, or them, by the most direct way, into England or Scotland respectively, and before one of the Justices of Peace of the county or stewartry, in England or Scotland respectively, living near the place and in the county where he, she, or they, shall arrive and land; which Justice of Peace is hereby authorized and required to proceed with regard to such person or persons as if such person or persons had been legally apprehended in the said county or stewartry of England or Scotland respectively."

Mr. CURRAN, in defence of Mr. Johnson, said,—

My Lords, it has fallen to my lot, either fortunately or unfortunately, as the event may be, to rise as Counsel for my client, on this important and momentous occasion. I appear before you, my Lords, in consequence of a writ issued by

his Majesty, commanding that cause be shown to this his Court, why his subject has been deprived of his liberty; and upon the cause shown in obedience to this writ, it is my duty to address you on the most awful question, if awfulness is to be judged by consequences and events, on which you have been ever called upon to decide. Sorry am I that the task has not been confided to more adequate powers; but, feeble as they are, they will at least not shrink from it. I move you, therefore, that Mr. Justice Johnson be released from illegal imprisonment.

I cannot but observe the sort of scenic preparation with which this sad drama is sought to be brought forward. In part, I approve it; in part, it excites my disgust and indignation. I am glad to find that the Attorney-General and the Solicitor-General, the natural and official prosecutors for the State, do not appear; and I infer from their absence, that his Excellency the Lord-Lieutenant disclaims any personal concern in this execrable transaction. I think it does him much honour; it is a conduct that equally agrees with the dignity of his character and the feelings of his heart. To his private virtues, whenever he is left to their influence, I willingly concur in giving the most unqualified tribute of respect. And I do firmly believe, it is with no small regret that he suffers his name to be even formally made use of, in avowing for a return of one of the Judges of the land, with as much indifference and *nonchalance*, as if he were a beast of the plough. I observe, too, the dead silence into which the public is frowned by authority for the sad occasion. No man dares to mutter, no newspaper dares to whisper, that such a question is afloat. It seems an inquiry among the tombs, or rather in the shades beyond them.

“Ibant sola sub nocte per umbram.”

I am glad it is so—I am glad of this factitious dumbness; for if murmurs dared to become audible, my voice would be too feeble to drown them; but when all is hushed—when nature sleeps—

“Cum quies mortalibus ægris,”

the weakest voice is heard—the shepherd’s whistle shoots across the listening darkness of the interminable heath, and gives notice that the wolf is upon his walk; and the same gloom and stillness that tempt the monster to come abroad, facilitate the communication of the warning to beware. Yes, through that silence the voice shall be heard; yes, through

that silence the shepherd shall be put upon his guard ; yes, through that silence shall the felon savage be chased into the toil. Yes, my Lords, I feel myself cheered and impressed by the composed and dignified attention with which I see you are disposed to hear me on the most important question that has ever been subjected to your consideration ; the most important to the dearest rights of the human being ; the most deeply interesting and animating that can beat in his heart, or burn upon his tongue. Oh ! how recreating is it to feel that occasions may arise in which the soul of man may resume her pretensions ; in which she hears the voice of nature whisper to her, "*os homini sublime dedi cælumque tueri* ;" in which even I can look up with calm security to the Court, and down with the most profound contempt upon the reptile I mean to tread upon ! I say, reptile ; because, when the proudest man in society becomes so much the dupe of his childish malice, as to wish to inflict on the object of his vengeance the poison of his sting, to do a reptile's work, he must shrink into a reptile's dimension ; and so shrunk, the only way to assail him, is to tread upon him. But to the subject :—This writ of Habeas Corpus has had a return. That return states, that Lord Ellenborough, Chief Justice of England, issued a warrant reciting the foundation of this dismal transaction : that *one* of the clerks of the Crown-Office had certified to him, that an indictment had been found at Westminster, charging the Honourable Robert Johnson, late of Westminster, one of the Justices of his Majesty's Court of Common Pleas, in Ireland, with the publication of certain slanderous libels against the government of that country ; against the person of his Excellency Lord Hardwicke, Lord-Lieutenant of that country ; against the person of Lord Redesdale, the Chancellor of Ireland ; and against the person of Mr. Justice Osborne, one of the Justices of the Court of King's Bench in Ireland. One of the clerks of the Crown-Office, it seems, certified all this to his Lordship. How many of those there are, or who they are, or which of them so certified, we cannot presume to guess, because the learned and noble Lord is silent as to those circumstances. We are only informed that one of them made that important communication to his Lordship. It puts me in mind of the information given to one of Fielding's Justices : "did not," says his worship's wife, "the man with the valet make his *fidavy* that you was *avagram* ?" I suppose it was some such petty-bag officer who gave Lord Ellenborough to understand that Mr. Justice Johnson was in-

dicted. And being thus given to understand, and be informed, he issued his warrant to a gentleman, no doubt of great respectability, a Mr. Williams, his tipstaff, to take the body of Mr. Justice Johnson, and bring him before a Magistrate, for the purpose of giving bail to appear within the first eight days of this term, so that there might be a trial within the sittings after; and if, by the blessing of God, he should be convicted, then to appear on the return of the *postea*, to be dealt with according to law.

Perhaps it may be a question for you to decide, whether that warrant, such as it may be, is not now absolutely spent; and, if not, how a man can contrive to be hereafter in England, on a day that is past? And high as the opinion may be in England of Irish understanding, it will be something beyond even Irish exactness, to bind him to appear in England, not a fortnight hence, but a fortnight ago. I wish, my Lords, we had the art of giving time this retrograde motion. If possessed of the secret, we might be disposed to improve it from fortnights into years.

There is something not incurious in the juxtaposition of signatures. The warrant is signed by the Chief-Justice of all England.—In music, the ear is reconciled to strong transitions of key, by a preparatory resolution of the intervening discords; but here, alas! there is nothing to break the fall: the august title of Ellenborough is followed by the unadorned name of brother Bell, the sponsor of his Lordship's warrant. Let me not, however, be suffered to deem lightly of the compeer of the noble and learned Lord. Mr. Justice Bell ought to be a lawyer; I remember him myself long a Crier* to, and I know his credit with, the state; he has had a *noli prosequi*. I see not, therefore, why it may not be fairly said, "*fortunati ambo!*" It appears by his return, that Mr. Justice Bell indorses this bill of lading to another consignee, Mr. Medlicot, a most respectable gentleman; he describes himself upon the warrant, and he gives a delightful specimen of the administration of justice, and the calendar of saints in office; he describes himself a Justice and a Peace-officer—that is, a Magistrate and a Catchpole:—so that he may receive informations as a Justice; if he can write, he may draw them as a Clerk; if not, he can execute the warrant as Bailiff; and, if it be a capital offence, you may see the Culprit, the Justice, the Clerk, the Bailiff, and the Hangman, together in the same cart; and, though he may not

* This gentleman was formerly Crier to the late Baron Hamilton, when the Baron went circuit as a Judge.

write, he may "ride and tie!" What a pity that their journey should not be further continued together! That, as they had been "lovely in their lives, so in their deaths they might not be divided!" I find, my Lords, I have undesignedly raised a laugh; never did I less feel merriment.—Let not me be condemned—let not the laugh be mistaken.—Never was Mr. Hume more just than when he says, that "in many things the extremes are nearer to one another than the means."—Few are those events that are produced by vice and folly, that fire the heart with indignation, that do not also shake the sides with laughter. So when the two famous moralists of old beheld the sad spectacle of life, the one burst into laughter, the other melted into tears: they were each of them right, and equally right.

" Si credas utrique
" Res sunt humanæ flebile ludibrium."

But these laughs are the bitter ireful laughs of honest indignation,—or they are the laughs of hectic melancholy despair.

It is stated to you, my Lords, that these two Justices, if Justices they are to be called, went to the house of the Defendant. I am speaking to Judges, but I disdain the paltry insult it would be to them, were I to appeal to any wretched sympathy of situation. I feel I am above it. I know the bench is above it. But I know, too, that there are ranks, and degrees, and decorums, to be observed; and, if I had a harsh communication to make a venerable Judge, and a similar one to his Crier, I should certainly address them in a very different language indeed. A Judge of the land, a man not young, of infirm health, has the sanctuary of his habitation broken open by these two persons, who set out with him for the coast, to drag him from his country, to hurry him to a strange land by the "most direct way!" till the King's writ stopt the malefactors, and left the subject of the King a waif dropt in the pursuit.

Is it for nothing, my Lords, I say this? Is it without intention, I state the facts in this way? It is with every intention. It is the duty of the public advocate not so to put forward the object of public attention, as that the skeleton only shall appear, without flesh, or feature, or complexion. I mean every thing that ought to be meant in a Court of Justice. I mean not only that this execrable attempt shall be intelligible to the Court as a matter of *law*, but shall be understood by the world as an act of *state*. If advocates had always the honesty and the courage, upon occasions like

this, to despise all personal considerations, and to think of no consequence but what may result to the public from the faithful discharge of their sacred trust, these phrenetic projects of power, these atrocious aggressions on the liberty and happiness of men, would not be so often attempted; for, though a certain class of delinquents may be screened from punishment, they cannot be protected from hatred and derision. The great tribunal of reputation will pass its inexorable sentence upon their crimes, their follies, or their incompetency; they will sink themselves under the consciousness of their situation; they will feel the operation of an acid so neutralizing the malignity of their natures, as to make them at least harmless, if it cannot make them honest. Nor is there any thing of risk in the conduct I recommend. If the fire be hot, or the window cold, turn your back to neither; turn your face. So, if you are obliged to arraign the acts of those in high stations, approach them not in malice, nor favour, nor fear. Remember, that it is the condition of guilt to tremble, and of honesty to be bold; remember, that your false fear can only give them false courage; that while you nobly avow the cause of truth, you will find her shield an impenetrable protection; and that no attack can be either hazardous or inefficient, if it be just and resolute.—If Nathan had not fortified himself in the boldness and directness of his charge, he might have been hanged for the malice of his parable.

It is, my Lords, in this temper of mind—befitting every advocate who is worthy of the name, deeply and modestly sensible of his duty, and proud of his privilege, equally exalted above the meanness of temporizing or of offending, most averse from the unnecessary infliction of pain upon any man or men whatsoever—that I now address you on a question, the most vitally connected with the liberty and well-being of every man within the limits of the British empire; which being decided one way, he may be a freeman; which being decided the other, he must be a slave. It is not the Irish nation only that is involved in this question; every member of the three realms is equally embarked: and would to God all England could listen to what passes here this day! they would regard us with more sympathy and respect, when the proudest Briton saw that his liberty was defended in what he would call a provincial Court, and by a provincial advocate. The abstract and general question for your consideration is this:—my Lord Ellenborough has signed with his own hand, a warrant, which has been in-

dorsed by Mr. Bell, an Irish Justice, for seizing the person of Mr. Justice Johnson, in Ireland, for conveying his person by the most direct way, in such manner as these bailiffs may choose, across the sea, and afterwards to the city of Westminster, to take his trial for an alleged libel against the persons entrusted with the government of Ireland, and to take that trial in a country where the supposed offender did not live at the time of the supposed offence, nor, since a period of at least eighteen months previous thereto, has ever resided; where the subject of his accusation is perfectly unknown; where the conduct of his Prosecutors, which has been the subject of the supposed libel, is equally unknown; where he has not the power of compelling the attendance of a single witness for his defence. Under that warrant, he has been dragged from his family; under that warrant, he was on his way to the water's edge: his transportation has been interrupted by the writ before you, and upon the return of that writ arises the question upon which you are to decide the legality or illegality of so transporting him for the purpose of trial. I am well aware, my Lords, of the limits of the present discussion; if the law were clear in favour of the Prosecutors, a most momentous question might arise—how far they may be delinquents, in daring to avail themselves of such a law for such a purpose?—but I am aware that such is not the present question; I am aware that this is no Court of impeachment; and, therefore, that your inquiry is, not whether such a power hath been criminally used, but whether it doth in fact exist? The arrest of the Defendant has been justified by the advocates of the Crown, under the forty-fourth of his present Majesty. I have had the curiosity to inquire into the history of that act, and I find, that in the month of May, 1804, the brother-in-law of one of the present Prosecutors obtained leave to bring in a bill, to “render more easy the apprehending and “bringing to trial offenders escaping from one part of the “United Kingdom to another, and also from one county to “another:” that bill was brought in; it travelled in the caravan of legislation unheeded and unnoticed, retarded by no difficulties of discussion or debate, and in due fulness of season it passed into a law, which was to commence from and after the 1st of August, 1804. This act, like a young Hercules, began its exploits in the cradle. In the November following, the present warrant was issued, under its supposed authority. Let me not be understood to say that the act has been slid through an unsuspecting legislature, under any

particular influence, or for any particular purpose: that any such man could be found, or any such influence exist, or any such lethargy prevail, would not, perhaps, be decent to suppose; still less do I question the legislative authority of Parliament. We all know that a Parliament may attain itself; and that its omnipotence may equally extend in the same way to the whole body of the people. We know also that most unjust and cruel acts of attainder have been obtained by corrupt men in bad times; and if I could bring myself to say, which I do not, that this act was contrived for the mere purpose of destroying an obnoxious individual, I should not hesitate to call it the most odious species of attainder that could be found upon the records of legislative degradation; because, for the simple purpose of extinguishing an individual, it would sweep the liberty of every being in the state into the vortex of general and undistinguished destruction. But these are points of view upon which the minds of the people of Ireland and England may dwell with terror, or indignation, or apathy, according as they may be fitted for liberty or for chains: but they are not points for the Court; and so I pass them by. The present arrest and detention are defended under the forty-fourth of the King: are they warranted by that act? That is the only question for you to decide; and you will arrive at that decision in the usual course, by inquiring, first, how the law stood before upon the subject; next, what the imperfection or grievance of that law was; and, thirdly, what is the remedy intended to be applied by the act in question?

First, then, how stood the law before?—upon this part, it would be a parade of useless learning to go farther back than the statute of Charles, the Habeas Corpus Act, which is so justly called the second Magna Charta of British liberty: what was the occasion of the law? the arbitrary transportation of the subject beyond the realm; that base and malignant war, which the odious and despicable minions of power are for ever ready to wage against all those who are honest and bold enough to despise, to expose, and to resist them. Such is the oscitancy of man, that he lies torpid for ages under these aggressions, until at last some signal abuse, the violation of Lucrece, the death of Virginia, the oppression of William Tell, shake him from his slumber. For years had those drunken gambols of power been played in England; for years had the waters of bitterness been rising to the brim; at last, a single drop caused them to overflow—and what does that great statute do? It defines and asserts the

right, it points out the abuse, and it endeavours to secure the right, and to guard against the abuse, by giving redress to the sufferer, and by punishing the offender. For years had it been the practice to transport obnoxious persons out of the realm into distant parts, under the pretext of punishment, or of safe custody. Well might they have said, to be sent "to that undiscovered country, from whose bourne no traveller returns;" for of these wretched travellers, how few ever did return? But of that flagrant abuse, this statute has laid the axe to the root: it prohibits the abuse; it declares such detention or removal illegal; it gives an action against all persons concerned in the offence, by contriving, writing, signing, countersigning, such warrant, or advising, or assisting therein. That you may form a just estimate of the rights which were to be secured, examine the means by which the infringement was in future to be prevented and punished. The injured party has a civil action against the offenders; but the legislature recollected, that the sneaking unprincipled humility of a servile packed Jury might do homage to ministerial power, by compensating the individual with nominal damages. The statute does that, of which I remember no other instance. It leaves the Jury at liberty to give damages to any extent, above five hundred pounds; but expressly forbids them to find a verdict of damages below it. Was this sufficient?—No.—The offenders incur a *præmunire*. They are put out of the King's protection; they forfeit their lands and goods; they are disabled from bearing any office of trust or profit. Did the statute stop there? The legislative saw, in their prospective wisdom, that the profligate favourite, who had committed treason against the King by the oppression of his subjects, might acquire such a dominion over the mind of his master, as by the exertion of prerogative to interrupt the course of justice, and prevent the punishment of his crime.—The King cannot pardon.—Are bulwarks like these ever constructed to repel the incursions of a contemptible enemy? Was it a trivial and ordinary occasion which raised this storm of indignation in the Parliament of that day? Is the ocean ever lashed by the tempest, to waft a feather, or to drown a fly? Thus haughtily and jealously does the statute restrain the abuses that may be committed against the liberty of the subject by the Judge, the Jury, or the Minister. One exception, and one exception only, does it contain:—it excepts from its protection, by the sixteenth section, persons who may have committed any "capital offence" in Scotland or

Ireland. If the principle of that exception were now open to discussion, sure I am, that much might be said against its policy. On the one side, you would have to consider the mischief of letting this statute protect a capital offender from punishment, by prohibiting his transmission to that jurisdiction where his crime was committed, and where alone he could be tried. On the other, you would have to weigh the danger to be feared from the abuse of such a power, which, as the Habeas Corpus Act stood, could not be resorted to in any ordinary way, but was confined to the soul and exclusive exercise of the advisers of the prerogative. You would have to consider whether it was more likely that it would be used against the guilty or the obnoxious; whether it was more likely to be used as an instrument of justice against the bad, or a pretext of oppression against the good; and, finally, whether you might not apply to the subject the humane maxim of our law—that better it is that one hundred guilty men should escape, than that one innocent, and, let me add, meritorious man, should suffer. But our ancestors have considered the question; they have decided; and, until we are better satisfied than I fear we can be, that we have not degenerated from their virtue, it can scarcely become us to pass any light or hasty condemnation upon their wisdom. In this great statute, then, my Lords, you have the line of demarcation between the prerogative and the people, as well as between the criminal law and the subject, defined with all the exactness, and guarded by every precaution that human prudence could devise. Wretched must that legislature be, whose acts you cannot trace to the first unchangeable principles of rational prerogative, of civil liberty, of equal justice! In this act you trace them all distinctly. By this act you have a solemn legislative declaration, “that it is incompatible with liberty to send any subject out of the realm, under pretence of any crime supposed or alleged to be committed in a foreign jurisdiction, except that crime be capital.” Such were the bulwarks which our ancestors drew about the sacred temple of liberty—such the ramparts by which they sought to bar out the ever-toiling ocean of arbitrary power; and thought (generous credulity!) that they had barred it out from their posterity for ever. Little did they foresee the future race of vermin that would work their way through those mounds, and let back the inundation; little did they foresee that their labours were so like those frail and transient works that threatened for a while the haughty crimes and battlements of Troy, but so soon

vanished before the force of the trident and the impulse of the waters; or that they were still more like the forms which the infant's finger traces upon the beach—the next breeze, the next tide, erases them, and confounds them with the barren undistinguished strand. The ill-omened bird that lights upon it, sees nothing to mark, to allure, or to deter, but finds all one obliterated unwaried waste;

“ Et sola secum sicca spatiat^{ur} arena.”

Still do I hope that this sacred bequest of our ancestors will have a more prosperous fortune, and be preserved by a more religious and successful care, a polar star to the wisdom of the legislator, and the integrity of the judge.

As such will I suppose its principle not yet brought into disgrace; and as such, with your permission, will I still presume to argue upon that principle.

So stood the law, till the two acts of the twenty-third and twenty-fourth of George II. which relate wholly to cases between county and county in England. Next followed the act of the thirteenth of his present Majesty, which was merely a regulation between England and Scotland. And next came the act of the forty-fourth of the present reign, upon which you are now called on to decide, which, as between county and county, is an incorporation of the two acts of George II.; and as between England, Scotland, and Ireland, is nearly a transcript of the thirteenth of the King.

Under the third and fourth section of this last act, the learned Counsel for the learned Prosecutors (for really I think it candid to acquit the Lord-Lieutenant of the folly or the shame of this business, and to suppose that he is as innocent of the project, from his temper, as he must, from his education, be ignorant of the subject) endeavour to justify this proceeding. The construction of this act they broadly and expressly contend to be this:—first, they assert that it extends not only to the higher crimes, but to all offences whatsoever:—secondly, that it extends not only to persons who may have committed offences within any given jurisdiction, and afterwards escaped or gone out of such jurisdiction, but to all persons, whether so escaping or going out, or not:—thirdly, that it extends to constructive offences, that is, to offences committed against the laws of certain jurisdictions, committed in places not within them, by persons that never put their feet within them, but, by construction of law, committing them within such jurisdiction, and of course

triable therein:—fourthly, that it extends peculiarly to the case of libels against the persons entrusted with the powers of government, or with offices in the state:—and, fifthly, that it extends not only to offences committed after the commencement of the act, but also to offences at any period, however remotely, previous to the existence of the statute; that is, that it is to have an *ex post facto* operation. The learned Prosecutors have been forced into the necessity of supporting these last monstrous positions, because, upon the return to the writ, and upon the affidavits, it appears, and has been expressly admitted in the argument:—first, that the supposed libel upon these noble and learned Prosecutors relates to the unhappy circumstances that took place in Ireland, on the twenty-third of July, 1803, and of course must have been published subsequent thereto:—and, secondly, that Mr. Justice Johnson, from the beginning of 1802, to the present hour, was never for a moment in England, but was constantly resident in Ireland; so that his guilt, whatever it be, must arise from some act of necessity, committed, in Ireland, and by no physical possibility committed or capable of being committed, in England; these are the positions upon which a learned Chancellor and a learned Judge come forward to support their cause, and to stake their character, each in the face of his country, and both in the face of the British empire: these are the positions, which, thank God, it belongs to my nature to abhor, and to my education to despise, and which it is this day my most prompt and melancholy duty to refute and to resist—most prompt in obeying, most grieved at the occasion that calls for such obedience.

We must now examine this act of the forty-fourth of the King, and in doing so, I trust you will seek some nobler assistance than can be found in the principles or the practice of day-rules or side-bar motions; something more worthy a liberal and learned Court, acting under a religious sense of their duty to their King, their country, and their God, than the feeble and pedantic aid of a stunted verbal interpretation, straining upon its tiptoe to peep over the syllable that stands between it and meaning. If your object was merely to see if its words could be tortured into a submission to a vindictive interpretation, you would have only to indorse the construction that these learned Prosecutors have put upon it, and that with as much grave deliberation as Mr. Justice Bell has vouchsafed to endorse the warrant, which my Lord Ellenborough has thought fit to issue under its authority.

You would then have only to look at it, "*ut leguleius quidam cautus atque actus, præcentor.*"

Lord Avonmore. No, Mr. Curran, you forget ; it is not *præcentor*; it is "*leguleius quidam cautus atque acutus, præco actionum, cantor formarum, auceps syllabarum.*"

Mr. Curran. I thank you, my Lord, for the assistance ; and I am the more grateful, because, when I consider the laudable and successful efforts that have been made of late to make science domestic and familiar, and to emancipate her from the trammels of scholarship, as well as the just suspicion under which the harbourers and abettors of those outlawed classics have fallen ; I see at what a risk you have ventured to help me out. And yet see, my Lord, if you are prudent in trusting yourself to the honour of an accomplice. Think, should I be prosecuted for this misprision of learning, if I could resist the temptation of escaping, by turning evidence against so notorious a delinquent as you, my good Lord, and so confessedly more criminal than myself, or perhaps than any other man in the empire.*

To examine this act, then, my Lords, we must revert to the three English statutes of which it is a transcript. The first of these is the twenty-third of George II. cap. 26. sect. 11.

So much of the title as relates to our present inquiry is, "for the apprehending of persons in any county or place, upon warrants granted by Justices of the Peace in any other county or place."

See now sect. 11. that contains the preamble and enactment as to this subject:—

"And, whereas, it frequently happens that persons, against whom warrants are granted by Justices of the Peace, for the several counties within this kingdom, escape into other counties or places out of the jurisdiction of the Justices of the Peace granting such warrants, and thereby avoid being punished for the offences wherewith they are charged : for remedy whereof, be it enacted by the authority aforesaid, that from and after the twenty-fourth day of June, one thousand seven hundred and fifty, in case any person against whom legal warrant shall be issued by any Justice or Justices of the Peace for any county, riding, division, city, liberty, town, or place within this kingdom, shall escape or go into any other county, riding, division, city, liberty, town, or place, out of the jurisdiction of the Justice or Justices granting such warrant, as aforesaid, it

* Lord Avonmore may be justly ranked amongst the first classical scholars in either Ireland or England.

shall and may be lawful for any Justice of the Peace of the county, riding, division, city, liberty, town, or place, to which such person shall have gone or escaped, to endorse such warrant, upon application made to him for that purpose, and to cause the person against whom the same shall have been issued to be apprehended and sent to the Justice or Justices who granted such warrant, or some other Justice or Justices of the county, riding, division, city, liberty, town, or place, from whence such person shall have gone or escaped, to the end that he or she may be dealt with according to law, any law or usage to the contrary notwithstanding."

This act was amended by the 24th of the same reign, the title of which was, "An act for amending and making more effectual a clause in an act passed in the last session of Parliament, for the apprehending of persons in any county or place, upon warrants granted by Justices of the Peace of any county or place."

It then recites the 11th section of the 23d of George II. and proceeds,—“And whereas such offender or offenders may reside or be in some other county, riding, division, city, liberty, town, or place, out of the jurisdictions of the Justice or Justices granting such warrant, as aforesaid, before the granting such warrant, and without escaping or going out of the county, riding, division, city, liberty, town, or place, after such warrant granted.”

I shall reserve a more particular examination of these two acts, for that head of my argument that shall necessarily require it. At present I shall only observe—first, that they are manifestly prospective; secondly, that they operate only as between county and county in England; thirdly, that they clearly and distinctly go to all offenders whatsoever, who may avoid trial and punishment of their offences by escaping from the jurisdiction in which they were committed, and were of course triable and punishable; and, fourthly, that provision is made for bailing the persons so arrested in the place where taken, if the offences charged upon them were bailable by law.

In the 13th of his present Majesty, it was thought fit to make a law with respect to criminals escaping from England to Scotland, and *vice versa*: of that act, the present statute of the 44th is a transcript. And upon this statute arises the first question made by the Prosecutors; namely, whether, like the acts of the 23d and 24th of George II. which were merely between county and county, it extended indiscrimi-

nately to the lowest as well as the highest offences? or whether the 13th and 44th, which go to kingdom and kingdom, are not confined to some and to what particular species of offences?—the preamble to these two statutes, so far as they bear upon our present question, is contained in the third section of the 44th, the act now under consideration: and there is not a word in it that is not most material. It says—“Whereas, it may frequently happen that felons
 “and other malefactors in Ireland may make their escape
 “into Great Britain, and also that felons and other male-
 “factors in Great Britain may make their escape into Ire-
 “land, whereby their crimes remain unpunished.” There being no sufficient provision by the laws now in force in Great Britain and Ireland respectively, for apprehending such offenders, and transmitting them into that part of the United Kingdom in which their offences were committed. “For remedy whereof, &c. and if any person against whom
 “a warrant shall be issued by any Justice of the Peace in
 “Ireland, for any crime or offence against the laws of Ire-
 “land, shall escape, go into, reside, or be in any place in
 “England or Scotland, it shall be lawful for any Justice of
 “the Peace for the place whither or where such persons
 “shall escape, &c. to endorse his name on such warrant;
 “which warrant so endorsed shall be a sufficient authority
 “to the person bringing it to execute the same by appre-
 “hending the person against whom it is granted, and to
 “convey him by the most direct way into Ireland, and be-
 “fore a Justice living near the place where he shall land,
 “which Justice shall proceed with regard to him as if he
 “had been legally apprehended in such county of Ireland.” The fourth section makes the same provision for escapes from England or Scotland into Ireland. The statute goes on and directs that the expenses of such removal shall be repaid to the person defraying the same, by the treasurer of the county in which the crime was committed, and the treasurer is to be allowed for it in his accounts.

To support the construction that takes in all possible offences of all possible degrees, you have been told, and upon the grave authority of notable cases, that the enacting part of a statute may go beyond its preamble; that it cannot be restrained by the preamble, and still less by the title; that here the enacting clause was the words “any offence,” and that “any offence” must extend to every offence, and of course to the offence in question. If the question had been of the lighter kind, you might perhaps have smiled at

the parade of authorities produced to establish what no lawyer ever thinks of denying. They would have acted with more advantage to the justice of the country, though perhaps not to the wishes of their clients, if they had reminded your Lordships, that in the construction of statutes, the preamble and even the title itself may give some assistance to the Judge in developing its meaning and its extent; if they had reminded you, that remedial laws are to be construed liberally, and penal laws with the utmost strictness and caution. And when they contend that a supposed libel is within the letter of this law, they would have done well to have added, that it is a maxim that there may be cases within the letter of a statute, which, notwithstanding, the Judge is bound to reject from its operation, as being incompatible with its spirit. They would have done well in adding, that the Judge is bound so to construe all laws, as not to infringe upon any of the known rules of religion or morality—any of the known rules of distributive justice—any of the established principles of the liberties and rights of the subject; and that it is no more than a decent and becoming deference to the legislator, to assume as certain, that whatever words he may have used, he could not possibly have meant any thing that upon the face of it was palpably absurd, immoral, or unjust. These are the principles on which I am persuaded this Court will always act, because I know them to be the principles on which every Court of Justice ought to act: and I abstain studiously from appealing to any judicial decisions in support of them, because to fortify them by precedent or authority would be to suppose them liable to be called in question. There is another rule which I can easily excuse the learned gentleman from adverting to, and that is, that when many statutes are made in *pari materia*, any one of them is to be construed, not independently of the others, but with a reference to the entire code, of which it is only a component part.

On these grounds, then, I say the 44th was not, and could not be intended to go to all offences whatsoever.

First, because the acts of 23d and 24th of George II. had already described “all persons” by words of the most general and comprehensive kind. If the framers of the 13th and 44th meant to carry these acts to the same length, they had the words of the former acts before their eyes, and yet they have used very different words: a clear proof, in my mind, that they meant to convey a very different meaning. In these latter acts they use very singular words—“felons and other male-

“factors;”—that these words are somewhat loose and indefinite, I make no difficulty of admitting; but will any man that understands English deny, that they describe offences of a higher and most enormous degree? You are told, that felon does not necessarily mean a capital offender, because there are felonies not capital, the name being derived from the forfeiture, not of life, but of property. You are also told, that malefactor means generally an ill-doer, and, in that sense, that every offender is a malefactor; but the 13th and 44th states this class to be felons and malefactors, for whose transmission from kingdom to kingdom “no sufficient provision” was made by the laws now in force.” Now I think it is not unfair reasoning to say, that this act extends to a class of offenders whose transmission was admitted to be not incompatible with the just liberty of the subject of England; but for whose transmission the legislature could not say there was *no* provision; but for whose transmission it was clear that there was not a sufficient provision, though there was some provision. If you can find any class so circumstanced, that is exclusively liable by law to be so transmitted, the meaning of the words “felons and other malefactors” becomes fixed, and must necessarily refer to such class.

Now that class is expressly described in the Habeas Corpus Act, because it declares the transmission of all persons to be illegal, except only persons charged with capital crimes; for their apprehension and transmission there was a provision—the *mandatum regis*; that is, the discretionary exercise of the prerogative. That power had therefore been used in cases of treason, as in Lundy’s case: so in the case of Lord Sanchar; Carliel, the principal in the murder of Turner, committed in London by the procurement of Lord Sanchar, was arrested in Scotland, whither he had fled, by the order of King James I., and brought back to England, where he was executed for the crime, as was Lord Sanchar, the accessory before the fact; but such interference of the prerogative might be granted or withheld at pleasure, could be applied for only with great difficulty and expense, and therefore might well be called an insufficient provision. No provision for such a purpose can be sufficient, unless, instead of depending on the caprice of men in power, it can be resorted to in the ordinary course of law. You have therefore, my Lords, to elect between two constructions; one, which makes an adequate provision for carrying the exception in the 16th section of the Habeas Corpus Act into

effect ; and the other, a complete and radical repeal of that sacred security for the freedom of Englishmen.—But further, the spirit and the letter of the Habeas Corpus law is, that the party arrested shall, without a moment's delay, be bailed, if the offence be bailable; but if misdemeanors are within this act, then an English subject, arrested under an Irish warrant, cannot be bailed within any part of the realm of England, but must be carried forward, in the custody of Irish bailiffs, to the sea-shore of his country, where he is to be embarked in such vessel as they think proper ; and, if it should be the good pleasure of his guardians to let him land alive in any part of Ireland, then, and not till then, may he apply to an Irish Justice to admit him to bail in a foreign country, where he is a perfect stranger, and where none but an idiot could expect to find any man disposed to make himself responsible for his appearance. Can you, my Lords, bring your minds easily to believe that such a tissue of despotism and folly could have been the sober and deliberate intention of the legislature? but further, under the acts of George II., even from one county to the next, the warrant by the first Justice must be authenticated upon oath, before it can be endorsed by the second; but in this act, between, perhaps, the remotest regions of different kingdoms, no authentication is required; and, upon the endorsement of, perhaps, a forged warrant, which the English Justice has no means of inquiring into, a British subject is to be marched through England, and carried over sea to Ireland, there to learn in the county of Kerry, or Galway, or Derry, that he had been torn from his family, his friends, his business, to the annihilation of his credit, the ruin of his affairs, the destruction of his health, in consequence of a mistake, or a practical joke, or an inhuman or remorseless project of vindictive malice; and that he is then at liberty to return, if he is able; that he may have a good action at law against the worthy and responsible bailiff that abused him, if he is foolish enough to look for him, or unfortunate enough to find him. Can you, my Lords, be brought seriously to believe, that such a construction would not be the foulest aspersion upon the wisdom and justice of the legislature?

I said, my Lords, that an Englishman may be taken upon the endorsement of a forged warrant. Let me not be supposed such a simpleton as to think that the danger of forgery makes a shade of difference in the subject. I know too well that calendar of saints, the Irish Justices; I am too much in the habit of prosecuting and defending them every term and

every commission, not to be able to guess at what price a customer might have real warrants by the dozen; and, without much sagacity, we might calculate the average expense of their endorsement at the other side of the water.—But, further yet, the act provides that the expense of such transmission shall be paid at the end of the journey, by the place where the crime has been committed—but, who is to supply the expenses by the way? what sort of Prosecutors do you think the more likely to advance those expenses—an angry minister, or a vindictive individual?—I can easily see that such a construction would give a most effectual method of getting rid of a troublesome political opponent; or a rival in trade; or a rival in love; or of quickening the undutiful lingering of an ancestor that felt not the maturity of his heir; but I cannot bring myself to believe, that a sober legislature, when the common rights of humanity seem to be beaten into their last entrenchment, and to make their last stand—I trust in God, a successful one—in the British empire, would choose exactly that awful crisis for destroying the most vital principles of common justice and liberty; or of showing to these nations, that their treasure and their blood were to be wasted in struggling for the noble privilege of holding the right of freedom, of habitation, and of country, at the courtesy of every little irritable officer of state, or of our worshipful Rivets, and Bells, and Medlicots, and their trusty and well-beloved cousins and catchpoles.

But, my Lords, even if the Prosecutor should succeed, which for the honour and character of Ireland I trust he cannot, in wringing from the bench an admission that all offences whatsoever are within this act, he will have only commenced his honourable cause, he will only have arrived at the vestibule of atrocity. He has now to show that Mr. Johnson is within the description of a malefactor, making his escape into Ireland, whereby his offence may remain unpunished, and liable to be arrested under a warrant endorsed in that place whither or where such person shall escape, go into, reside, or be. For this inquiry you must refer to the 23d and 24th of George II. The first of these, 23d, cap. 11. recites the mischief—"that persons against whom warrants
"are granted, *escape* into other counties, and thereby avoid
"being punished." The enacting part then gives the remedy:—"the Justice for the place into which *such* person
"shall have gone or escaped, shall endorse the original
"warrant, and the person accused shall thereunder be sent
"to the Justice who granted it, to be by him dealt with," &c.

If words can be plain, these words are so—they extend to persons actually committing crimes within a jurisdiction, and actually escaping into some other, after warrant granted, and thereby avoiding trial. In this act there were found two defects:—first, it did not comprehend persons changing their abode before warrant issued, and whose removing, as not being a direct flight from pursuit, could scarcely be called an escape;—secondly, it did not give the second Justice a power to bail. And here you see how essential to justice it was deemed, that the person arrested should be bailed on the spot and the moment of arrest, if the charge wasailable.

Accordingly, the 24th of George II. cap. 55. was made:—after reciting the former act, and the class of offenders thereby described, namely, actual offenders actually escaping, it recites, that “whereas, *such offenders* may reside, “or be in some other county before the warrant granted, “and without escaping or going out of the county after “such a warrant granted;” it then enacts, “that the Justice “for such place where such person shall escape, go into, “reside, or be, shall endorse, &c. and may bail, ifailable, or “transmit,” &c.

Now the construction of these two acts taken together is manifestly this:—it takes in every person, who being in any jurisdiction, and committing an offence therein, escaping after warrant, or without escaping after warrant, going into some other jurisdiction, and who shall there *reside*, that is, permanently abide, or *shall* be, that is permanently, so as to be called a resident.

Now here it is admitted, that Mr. Johnson was not within the realm of England since the beginning of 1802, more than a year before the offence existed; and therefore you are gravely called upon to say that he is the person who made his escape *from* a place where he never was, and into a place which he had never left.—To let in this wise and humane construction, see what you are called upon to do:—the statute makes such persons liable to arrest, if they shall have done certain things; to wit, “if they shall escape, go into, reside, or “be:” but if the fact of simply being, *i. e.* existing in another jurisdiction, is sufficient to make them so liable, it follows of course, that the only two verbs that imply doing any thing, that is *escape* or *go into*, must be regarded as superfluous; that is, that the legislative had no idea whatsoever to be conveyed by them when they used them, and therefore are altogether expunged and rejected.

Such, my Lords, are the strange and unnatural monsters that may be produced by the union of malignity and folly. I cannot but own, that I feel an indignant, and perhaps ill-natured satisfaction, in reflecting that my own country cannot monopolize the derision and detestation, that such a production must attract. It was originally conceived by the wisdom of the east; it has made its escape, and come into Ireland, under the sanction of the first criminal Judge of the empire: here, I trust in God, we shall have only to feel shame or anger at the insolence of the visit, without the melancholy aggravation of such an execrable guest continuing to reside or to be among us. On the contrary, I will not dismiss the cheering expectation from my heart, that your decision, my Lords, will show the British nation, that a country, having as just and as proud an idea of liberty as herself, is not an unworthy ally in the great contest for the rights of humanity; is no unworthy associate in resisting the progress of barbarity and military despotism, and in defending against its enemies that great system of British freedom, in which we have now a common interest, and under the ruins of which, if it should be overthrown, we must be buried in a common destruction.

I am not ignorant, my Lords, that this extraordinary construction has received the sanction of another Court, nor of the surprise and dismay with which it smote upon the general heart of the bar. I am aware that I may have the mortification of being told in another country of that unhappy decision, and I foresee in what confusion I shall hang down my head when I am told it. But I cherish too the consolatory hope, that I shall be able to tell them that I had an old and learned friend, whom I would put above all the sweepings of their hall, who was of a different opinion; who had derived his ideas of civil liberty from the purest fountains of Athens and of Rome; who had fed the youthful vigour of his studious mind, with the theoretic knowledge of their wisest philosophers and statesmen; and who had refined the theory into the quick and exquisite sensibility of moral instinct, by contemplating the practice of their most illustrious examples; by dwelling on the sweet-soul'd piety of Cimon; on the anticipated Christianity of Socrates; on the gallant and pathetic patriotism of Epaminondas; on that pure austerity of Fabricius, whom to move from his integrity would have been more difficult than to have pushed the sun from his course. I would add, that if he had seemed to hesitate, it was but for a moment; that his hesitation was like the passing cloud that floats across the morning sun, and hides it from the

view, and does so for a moment hide it, by involving the spectator, without even approaching the face of the luminary. And this soothing hope I draw from the dearest and tenderest recollections of my life, from the remembrance of those attic nights and those refectations of the gods which we have spent with those admired, and respected, and beloved companions who have gone before us;—over whose ashes the most precious tears of Ireland have been shed: yes, my good Lord, I see you do not forget them; I see their sacred forms passing in sad review before your memory; I see your pained and softened fancy recalling those happy meetings, when the innocent enjoyment of social mirth expanded into the nobler warmth of social virtue, and the horizon of the board became enlarged into the horizon of man;—when the swelling heart conceived and communicated the pure and generous purpose,—when my slenderer and younger taper imbibed its borrowed light from the more matured and redundant fountain of yours. Yes, my Lord, we can remember those nights, without any other regret than that they can never more return; for

“ We spent them not in toys, or lust, or wine;
 “ But search of deep philosophy,
 “ Wit, eloquence, and poesy;
 “ Arts which I lov’d, for they, my friend, were thine.” *

But, my Lords, to return to a subject, from which to have thus far departed, I think, may not be wholly without excuse. The express object of the 44th was to send persons *from* places where they were not triable by law, back to the places that had jurisdiction to try them. And in those very words does Mr. Justice Blackstone observe on the 13th of the King, that it was made to prevent impunity by escape, by giving a power of “ sending back ” such offenders as had so escaped.

This topic of argument would now naturally claim its place in the present discussion. I mention it now, that it might not be supposed that I meant to pretermitt so important a consideration. And I only mention it, because it will connect itself with a subsequent head of this inquiry in a manner more forcibly applicable to the object; when I think I may venture to say it will appear to demonstration, that if the offence charged upon the Defendant is triable at all, it is triable in Ireland, and nowhere else; and, of course, that

* Those who know Lord Avonmore will readily perceive and acknowledge how strong a likeness this picture bore his Lordship.

the Prosecutors are acting in direct violation of the statute, when they seek to transport him from a place where he can be tried, into another country that can have no possible jurisdiction over him.

Let us now, my Lords, examine the next position contended for by these learned Prosecutors. Having laboured to prove that the act applies not merely to capital crimes, but to all offences whatsoever; having laboured to show that an act for preventing impunity by escape extends to cases not only where there was no escape, but where escape in fact was physically impossible, they proceeded to put forward boldly a doctrine which no lawyer—I do not hesitate to say it—in Westminster-hall would have the folly or the temerity to advance; that is, that the Defendant may, by construction of law, be guilty of the offence in Westminster, though he should never have passed within its limits, till he was sent thither to be tried. With what a fatal and inexorable uniformity do the tempers and characters of men domineer over their actions and conduct! How clearly must an Englishman, if by chance there be any now listening to us, discern the motives and principles that dictated the odious persecutions of 1794 reassuming their operations; forgetting that public spirit by which they were frustrated; unappalled by fear, undeterred by shame, and returning again to the charge; the same wild and impious nonsense of constructive criminality, the same execrable application of the ill-understood rules of a vulgar, clerk-like, and illiterate equity, to the sound, and plain, and guarded maxims of the criminal law of England! the purest, the noblest, the chastest system of distributive justice that was ever venerated by the wise, or perverted by the foolish, or that the children of men, in any age or climate of the world, have ever yet beheld; the same instruments, the same movements, the same artists, the same doctrines, the same doctors, the same servile and infuriate contempt of humanity, and persecution of freedom! the same shadows of the varying hour, that extend or contract their length, as the beam of a rising or sinking sun plays upon the gnomon of self-interest! How demonstratively does the same appetite for mice authenticate the identity of the transformed princess that had been once a cat.

But it seems as if the whole order and arrangement of the moral and the physical world had been contrived for the instruction of man, and to warn him that he is not immortal. In every age, in every country, do we see the natural rise,

advancement, and decline of virtue and of science. So it has been in Greece, in Rome; so it must be, I fear, the fate of England. In science, the point of its maturity and manhood is the commencement of its old age; the race of writers, and thinkers, and reasoners, passes away, and gives place to a succession of men that can neither write, nor think, nor reason. The Hales, the Holts, and the Somers, shed a transient light upon mankind, but are soon extinct and disappear, and give place to a superficial and overweening generation of laborious and strenuous idlers,—of silly scholiasts, of wrangling mooters, of prosing garrulists, who explore their darkling ascent upon the steps of science, by the balustrade of cases and manuscripts; who calculate their depth by their darkness; and fancy they are profound, because they feel they are perplexed. When the race of the Palladios is extinct, you may expect to see a clumsy hod-man collected beneath the shade of his shoulders, *ἀνὴρ ἡνέστε μέγαρτε ἐξοχος ἀνδρῶπων κεφαλὴν καὶ εὐρέας ὤμους*; affecting to fling a builder's glance upon the temple, on the proportion of its pillars; and to pass a critic's judgment on the doctrine that should be preached within them.

Let it not, my Lords, be considered amiss, that I take this up rather as an English than an Irish question. It is not merely because we have no Habeas Corpus law in existence (the antiquarian may read of it, though we do not enjoy it); it is not merely because my mind refuses itself to the delusion of imaginary freedom, and shrinks from the meanness of affecting an indignant haughtiness of spirit that belongs not to our condition, that I am disposed to argue it as an English question; but it is because I am aware that we have now a community of interest and of destiny that we never had before—because I am aware, that blended as we now are, the liberty of man must fall where it is highest, or rise where it is lowest, till it finds its common level in the common empire—and because, also, I wish that Englishmen may see, that we are conscious that nothing but mutual benevolence and sympathy can support the common interest that should bind us against the external or intestine foe; and that we are willing, whenever the common interest is attacked, to make an honest and animated resistance, as in a common cause, and with a cordial and tender anxiety for their safety as for our own.

Let me now briefly, because no subject can be shorter or plainer, consider the principle of local jurisdictions, and constructive crimes.

A man is bound to obedience, and punishable for disobedience of laws:—first, because, by living within their jurisdiction, he avails himself of their protection; and this is no more than the reciprocity of protection and allegiance on a narrower scale:—and, secondly, because, by so living within their jurisdiction, he has the means of knowing them, and cannot be excused because of his ignorance of them. I should be glad to know upon the authority of what manuscript, of what pocket-case, the soundness of these principles can be disputed? I should be glad to know upon what known principle of English law, a Chinese, or a Laplander, can be kidnapped into England, and arraigned for a crime which he committed under the pole, to the injury of a country which he had never seen—in violation of a law which he had never known, and to which he could not owe obedience—and, perhaps, for an act, the non-performance of which might have forfeited his liberty or his life to the laws of that country which he was bound to know, and was bound to obey? Very differently did our ancestors think of that subject.—They thought it essential to justice, that the jurisdiction of criminal law should be local and defined—that no man should be triable but there, where he was accused of having actually committed the offence; where the character of the prosecutor, where his own character was known, as well as the characters of the witnesses produced against him; and where he had the authority of legal process to enforce the attendance of witnesses for his defence. They were too simple to know any thing of the equity of criminal law. Poor Bracton or Fleta would have stared if you had asked them, “What, gentlemen, do you mean to say that such a crime as this shall escape from punishment?” Their answer would have been, no doubt, very simple and very foolish: they would have said, “We know there are many actions that we think bad actions, which yet are not punishable, because not triable by law; and that are not triable, because of the local limits of criminal jurisdictions.” And, my Lords, to show with what a religious scrupulosity the locality of jurisdictions was observed, you have an instance in the most odious of all offences, treason only excepted—I mean the crime of wilful murder. By the common law, if a man in one county procured a murder to be committed, which was afterwards actually committed in another, such procuror could not be tried in either jurisdiction, because the crime was not completed in either. This defect was remedied by the act of Edward VI. which made the author

of the crime amenable to justice. But in what jurisdiction did it make him amenable? was it there where the murder was actually perpetrated? by no means; but there only where he had been guilty of the procurement, and where alone his accessorial offence was completed. And here you have the authority of Parliament for this abstract position, that where a man living in one jurisdiction does an act, in consequence of which a crime is committed within another jurisdiction, he is by law triable only where his own personal act of procurement was committed, and not there where the procured or projected crime actually took effect. In answer to these known authorities of common law, has any statute, has a single decision or even dictum of a Court, been adduced? Or, in an age when the pastry-cooks and snuff-shops have been defrauded of their natural right to these compositions that may be useful without being read, has even a single manuscript been offered to show the researches of these learned Prosecutors, or to support their cause? No, my Lords; there has not.

I said, my Lords, that this was a fruit from the same tree that produced the stupid and wicked prosecutions of 1794; let me not be supposed to say it is a mere repetition of that attempt, without any additional aggravation. In 1794, the design—and odious enough it was—was confined to the doctrine of constructive guilt; but it did not venture upon the atrocious outrage of a substituted jurisdiction: the Englishman was tried on English ground, where he was known, where he could procure his witnesses, where he had lived, and where he was accused of a crime, whether actual or constructive; but the locality of the trial defeated the infernal malice of those prosecutions. The speeches of half the natural day, where every Juryman had his hour, were the knell of sleep, but they were not the knell of death. The project was exposed, and the destined victims were saved. A piece so damned could not safely be produced again on the same stage. It was thought wise, therefore, to let some little time pass, and then to let its author produce it on some distant provincial theatre, for his own benefit, and at his own expense and hazard. To drag an English Judge from his bench, or an English Member of Parliament from the senate, and in the open day, in the city of London, to strap him to the roof of a mail-coach, or pack him up in a waggon, or hand him over to an Irish bailiff, with a rope tied about his leg, to be goaded forward like an ox, on his way to Ireland, to be there tried for a constructive misdemeanor, would be

an experiment, perhaps, not very safe to be attempted—These Merlins, therefore, thought it prudent to change the scene of their sorcery :—

“ *Modo Romæ, modo ponit Athenis !* ”

The people of England might, perhaps, enter into the feelings of such an exhibition with an officiousness of sympathy not altogether for the benefit of the contrivers—

“ *Nec natos coram populo Medea trucidet—* ”

and it was thought wise to try the second production before spectators whose necks were pliant, and whose hearts were broken ; where every man who dared to refuse his worship to the golden calf, would have the furnace before his eyes, and think that it was at once useless and dangerous to speak, and discreet at least, if it was not honest, to be silent. I cannot deny that it was prudent to try an experiment, that if successful, must reduce an Englishman to a state of slavery, more abject and forlorn than that of the helots of Sparta, or the negroes of your plantations—for see, my Lords, the extent of the construction now broadly and directly contended for at your bar :—The King’s peace in Ireland, it seems, is distinct from his peace in England, and both are distinct from his peace in Scotland ; and, of course, the same act may be a crime against each distinct peace, and severally and successively punishable in each country—so much more inveterate is the criminality of a constructive than an actual offence. So that the same man for the same act against all laws that he never heard of, may be punished in Ireland, be then sent to England, by virtue of the warrant of Mr. Justice Bell, endorsed by my Lord Ellenborough ; and after having his health, his hopes, and his property destroyed, for his constructive offences against his Majesty’s peace in Ireland, and his Majesty’s peace in England, he may find, that his Majesty’s peace in the Orkneys, has, after all, a vested remainder in his carcass ; and, if it be the case of a libel, for the full time and term of fourteen years from the day of his conviction before the Scottish jurisdiction, to be fully completed and determined. Is there, my Lords, can there be a man who hears me, that does not feel that such a construction of such a law would put every individual in society under the despotical dominion, would reduce him to be the despicable chattel, of those most likely to abuse their power, the profligate of the higher, and the abandoned of the lower orders ; to the remorseless malice of a vindictive Minister ;

to the servile instrumentality of a trading Justice?—Can any man who hears me, conceive any possible case of abduction, of rape, or of murder, that may not be perpetrated, under the construction now shamelessly put forward?—Let us suppose a case:—By this construction a person in England, by procuring a misdemeanor to be committed in Ireland, is constructively guilty in Ireland, and, of course, triable in Ireland—let us suppose that Mr. Justice Bell receives, or says he receives, information, that the lady of an English nobleman wrote a letter to an Irish chambermaid, counselling her to steal a row of pins from an Irish pedlar, and that the said row of pins was, in consequence of such advice and counsel, actually stolen, against the Irish peace of our Lord the King; suppose my Lord Ellenborough, knowing the signature, and reverencing the virtue of his tried and valued colleague, endorses this warrant; is it not clear as the sun that this English lady may, in the dead of the night, be taken out of her bed, and surrendered to the mercy of two or three Irish bailiffs, if the captain that employed them should happen to be engaged in any contemporary adventure nearer to his heart, without the possibility of any legal authority interposing to save her—to be matronized in a journey by land, and a voyage by sea, by such modest and respectable guardians—to be dealt with during the journey as her companions might think proper—and to be dealt with afterward by the worshipful correspondent of the noble and learned Lord, Mr. Justice Bell, according to law?—I can without much difficulty, my Lords, imagine, that after a year or two had been spent in accounts current, in drawing and redrawing for human flesh, between our worthy Bells and Medlicots on this side of the water, and their noble or their ignoble correspondents on the other, that they might meet to settle their accounts, and adjust their balances. I can conceive that the items might not be wholly destitute of curiosity:—Brother B. I take credit for the body of an English patriot.—Brother E. I set off against it that of an Irish Judge.—Brother B. I charge you in account with three English Bishops.—Brother E. I set off Mrs. M'Lean and two of her chickens; petticoat against petticoat.—Brother B. I have sent you the body of a most intractable disturber, a fellow that has had the impudence to give a threshing to Bonaparte himself; I have sent you Sir Sidney.—Dearest Brother E.—But I see my learned opponents smile—I see their meaning.—I may be told, that I am putting imaginary and ludicrous, but not probable, and therefore, not supposable cases. But I

answer, that reasoning would be worthy only of a slave, and disgraceful to a freeman. I answer, that the condition and essence of rational freedom is, not that the subject probably will not be abused, but that no man in the state shall be clothed with any discretionary power, under the colour and pretext of which he can dare to abuse him. As to probability, I answer, that in the mind of man there is no more instigating temptation to the most remorseless oppression, than the rancour and malice of irritated pride and wounded vanity.—To the argument of improbability, I adduce in answer, the very fact, the very question in debate; nor to such answer can I see the possibility of any reply, save that the Prosecutors are so heartily sick of the point of view into which they have put themselves by their prosecution, that they are not likely again to make a similar experiment. But when I see any man fearless of power, because it possibly or probably may not be exercised upon him, I am astonished at his fortitude; I am astonished at the tranquil courage of any man who can quietly see that a loaded cannon is brought to bear upon him, and that a fool is sitting at its touch-hole with a lighted match in his hand. And yet, my Lords, upon a little reflection, what is it, after, what we have seen, that should surprise us, however it may shock us?—What have the last ten years of the world been employed in, but in destroying the land-marks of rights, and duties, and obligations; in substituting sounds in the place of sense; in substituting a vile and canting methodism in the place of social duty and practical honour; in suffering virtue to evaporate into phrase, and morality into hypocrisy and affectation?—We talk of the violations of Hamburgh or of Baden; we talk of the despotical remorseless barbarian who tramples on the common privileges of the human being; who, in defiance of the most known and sacred rights, issues the brutal mandate of usurped authority; who brings his victim by force within the limits of a jurisdiction to which he never owed obedience, and there butchers him for a constructive offence. Does it not seem as if it was a contest whether we should be more scurrilous in invective, or more atrocious in imitation? Into what a condition must we be sinking, when we have the front to select as the subjects of our obloquy, those very crimes which we have flung behind us in the race of profligate rivalry!

My Lords, the learned Counsel for the Prosecutors have asserted, that this act of the 44th of the King extends to all offences, no matter how long or previously to it they may

have been committed.—The words are, “That from and after the 1st day of August, 1804, if any person, &c. shall “escape, &c.”—Now certainly nothing could be more convenient for the purpose of the Prosecutors, than to dismiss, as they have done, the words “escape and go into,” altogether. If those words could have been saved from the ostracism of the Prosecutors, they must have designated some act of the offenders, upon the happening or doing of which the operation of the statute might commence; but the temporary bar of these words they wave by the equity of their own construction, and thereby make it a retrospective law; and having so construed it a manifestly *ex post facto* law, they tell you it is no such thing, because it creates no new offence, and only makes the offender amenable who was not so before. The law professes to take effect only from and after the 1st of August, 1804:—now, for eighteen months before that day, it is clear that Mr. Johnson could not be removed by any power existing from his country and his dwelling; but the moment the act took effect, it is made to operate upon an alleged offence, committed, if at all, confessedly eighteen months before. But another word as to the assertion, that it is not *ex post facto*, because it creates no new crime, but only makes the party amenable. The force of that argument is precisely this:—If this act inflicted deportation on the Defendant by way of punishment after his guilt had been established by conviction, that would, no doubt, be tyrannical, because *ex post facto*; but here he suffers the deportation, while the law is bound to suppose him perfectly innocent; and that only by way of process to make him amenable, not by way of punishment: and surely he cannot be so unreasonable as not to feel the force of the distinction. How naturally, too, we find similar outrages resort to similar justifications! Such exactly was the defence of the forcible entry into Baden. Had that been a brutal violence committed in perpetration of the murder of the unfortunate victim, perhaps very scrupulous moralists might find something in it to disapprove; but his Imperial Majesty was too delicately tender of the rights of individuals and of nations, to do any act so flagrant as that would be, if done in that point of view; but his Imperial Majesty only introduced a clause of *ne omittas* into his warrant, whereby the worshipful Bells and Medlicots that executed it were authorized to disregard any supposed fantastical privilege of nations that gave sanctuary to traitors; and he did that from the purest motives, from as disinte-

rested a love of justice as that of the present Prosecutors; and not at all in the way of an *ex post facto* law, but merely as process to bring him in, and make him amenable to the competent and unquestionable jurisdiction of the *bois de Boulogne*.—Such are the wretched sophistries to which men are obliged to have recourse, when their passions have led them to do what no thinking man can regard without horror, what they themselves cannot look at without shame; and for which no legitimate reasoning can suggest either justification or excuse. Such are the principles of criminal justice, on which the first experiment is made in Ireland; but I venture to pledge myself to my fellow-subjects of Great Britain, that if the experiment succeeds, they shall soon have the full benefit of that success. I venture to promise them, they shall soon have their full measure of this salutary system for making men “amenable,” heaped and running over into their bosoms.

There now remains, my Lords, one, and only one topic of this odious subject, to call for observation. The offence here appears by the return and the affidavits, to be a libel upon the Irish Government, published by construction in Westminster. Of the constructive commission of a crime in one place by an agent, who, perhaps, at the moment of the act, is in another hemisphere, you have already enough. Here, therefore, we will consider it simply as an alleged libel upon the Irish Government; and whether, as such, it is a charge coming within the meaning of the statute, and for which a common Justice of Peace in one kingdom, is empowered to grant a warrant for conveying the person accused for trial into the other. Your Lordships will observe, that in the whole catalogue of crimes for which a Justice of Peace may grant a warrant, there is not one that imposes upon him the necessity of deciding upon any matter of law, involving the smallest doubt or difficulty whatsoever. In treason, the overt act; in felony, whether capital or not, the act; in misdemeanors, the simple act. The dullest Justice can understand what is a breach of the peace, and can describe it in his warrant. It is no more than the description of a fact, which the informer has seen and sworn to. But no libel comes within such a class; for it is decided over and over, that a libel is no breach of the peace, and upon that ground it was that Mr. Wilkes, in 1763, was allowed the privilege of Parliament, which privilege does not extend to any breach of the peace.

See then, my Lords, what a task is imposed upon a Justice

of the Peace, if he is to grant such a warrant upon such a charge: he no doubt may easily comprehend the allegation of the informer, as to the fact of writing the supposed libel; in deciding whether the facts sworn amounted to a publication or not, I should have great apprehension of his fallibility; but if he got over those difficulties, I should much fear for his competency to decide what given facts would amount to a constructive publication.—But even if he did solve that question—a point on which, if I were a Justice, I should acknowledge myself most profoundly ignorant—he would then have to proceed to a labour, in which I believe no man could expect him to succeed: that is, how far the paper sworn to was, in point of legal construction, libellous or not. I trust this Court will never be prevailed upon to sanction, by its decision, a construction that would give to such a set of men a power so incompatible with every privilege of liberty or of law. To say it would give an irresistible power of destroying the liberty of the press in Ireland, would, I am aware, be but a silly argument, where such a thing has long ceased to exist; but I have for that very reason a double interest now, as a subject of the empire, in that noble guardian of liberty in the sister nation. When my own lamp is broken, I have a double interest in the preservation of my neighbour's. But if every man in England, who dares to observe, no matter how honestly and justly, upon the conduct of Irish Ministers, is liable to be torn from his family, and dragged hither by an Irish bailiff, for a constructive libel against the Irish Government, and upon the authority of an Irish warrant, no man can be such a fool as not to see the consequence. The inevitable consequence is this, that at this awful crisis, when the weal, not of this empire only, but of the whole civilized world, depends on the steady faith and consolidated efforts of these two countries—when Ireland is become the right arm of England—when every thing that draws the common interest and affection closer gives the hope of life—when every thing that has even a tendency to relax that sentiment is a symptom of death,—even at such a crisis may the rashness or folly of those entrusted with its management, so act as to destroy its internal prosperity and repose, and lead it into the twofold fatal error, of mistaking its natural enemies for its friends, and its natural friends for its natural enemies; without any man being found so romantically daring, as to give notice of the approaching destruction.

My Lords, I suppose the learned Counsel will do here

what they have done in the other Court: they will assert that this libel is not triable here; and they will argue that so false and heinous a production surely ought to be triable somewhere. As to the first position, I say the law is directly against them. From a very early stage of the discussion, the gentlemen for the prosecution thought it wise for their clients to take a range into the facts much more at large than they appeared on the return to the writ, or even by the affidavits that have been made; and they have done this to take the opportunity of aggravating the guilt of the Defendant, and at the same time of panegyrising their clients; they have therefore not argued upon the libel generally as a libel, but they have thought it prudent to appear perfectly acquainted with the charges which it contains:—they have therefore assumed, that it relates to the transactions of the 23d of July, 1803; and that the guilt of the Defendant was, that he wrote that letter in Ireland, which was afterwards published in England—not by himself, but by some other persons. Now, on these facts, nothing can be clearer than that he is triable here. If it be a libel, and if he wrote it here, and it was published in England, most manifestly there must have been a precedent publication, not merely by construction of law, in Ireland, but a publication by actual fact; and for this plain reason, if you for a moment suppose the libel in his possession (and if he did in fact write it, I can scarcely conceive that it was not, unless he wrote it perhaps by construction), there were no physical means of transmitting it to England, that would not amount to a publication here; because, if he put it into the post-office, or gave it to a messenger to carry thither, that would be complete evidence of publication against him: so would the mere possession of the paper, in the hands of the witness who appeared and produced it, be perfect evidence, if not accounted for or contradicted, to charge him with the publication; so that really I am surprised how gentlemen could be betrayed into positions so utterly without foundation. They would have done just as usefully for their clients, if they had admitted, what every man knows to be the fact, that is, that they durst not bring the charge before an Irish Jury. The facts of that period were too well understood. The Irish public might have looked at such a prosecution with the most incredulous detestation; and if they had been so indiscreet as to run the risk of coming before an Irish Jury, instead of refuting the charges against them as a calumny, they would have exposed themselves to the peril

of establishing the accusation, and of raising the character of the man whom they had the heart to destroy, because he had dared to censure them. Let not the learned gentlemen, I pray, suppose me so ungracious as to say, that this publication, which has given so much pain to their clients, is actually true; I cannot personally know it to be so, nor do I say so, nor is this the place or the occasion to say that it is so. I mean only to speak positively to the question before you, which is matter of law. But as the gentlemen themselves thought it meet to pronounce an eulogy on their clients, I thought it rather unseemly not to show that I attended to them: I have most respectfully done so; I do not contradict any praise of their virtues or their wisdom, and I only wish to add my very humble commendation of their prudence and discretion, in not bringing the trial of the present libel before a Jury of this country.

The learned Counsel have not been contented with abusing this libel as a production perfectly known to them, but they have wandered into the regions of fancy. No doubt the other Judges, to whom those pathetic flights of forensic sensibility were addressed, must have been strongly affected by them. The learned gentlemen have supposed a variety of possible cases. They have supposed cases of the foulest calumniators aspersing the most virtuous ministers. Whether such supposed cases have been suggested by fancy or by fact, it is not for me to decide; but I beg leave to say, that it is as allowable to us as to them to put cases of supposition—

—“Cur ego si fingere pauca
“Possum, invidear?”

Let me, then, my Lords, put an imaginary case of a different kind:—let me suppose that a great personage, entrusted with the safety of the citadel (meaning and wishing perhaps well, but misled by those lacquered vermin that swarm in every great hall), leaves it so loosely guarded, that nothing but the gracious interposition of Providence has saved it from the enemy. Let me suppose another great personage, going out of his natural department, and under the supposed authority of high station, disseminating such doctrines as tend to root up the foundation of society—to destroy all confidence between man and man—and to impress the great body of the people with a delusive and desperate opinion, that their religion could dissolve or condemn the sacred obligations that binds them to their country—that their

rulers have no reliance upon their faith, and are resolved to shut the gates of mercy against them.

Suppose a good and virtuous man saw that such doctrines must necessarily torture the nation into such madness and despair, as to render them unfit for any system of mild or moderate government; that if on one side bigotry or folly shall inject their veins with fire, such a fever must be kindled, as can be allayed only by keeping a stream of blood perpetually running from the other; and that the horrors of martial law must become the direful but inevitable consequence. In such a case, let me ask you, what would be his indispensable duty?—it would be, to avert such dreadful dangers, by exposing the conduct of such persons—by holding up the folly of such bigoted and blind enthusiasm to condign derision and contempt; and painfully would he feel that on such an occasion he must dismiss all forms and ceremonies; and that to do his duty with effect, he must do it without mercy. He should also foresee, that a person so acting, when he returned to those to whom he was responsible, would endeavour to justify himself by defaming the country which he had abused—for calumny is the natural defence of the oppressor: he should therefore so reduce his personal credit to its just standard, that his assertions might find no more belief than they deserved. Were such a person to be looked on as a mere private individual, charity and good-nature might suggest not a little in his excuse. An inexperienced man, new to the world, and in the honeymoon of preferment, would run no small risk of having his head turned in Ireland. The people in our island are by nature penetrating, sagacious, artful, and comic—“*natio comæda est.*” In no country under heaven would an ass be more likely to be hoodwinked, by having his ears drawn over his eyes, and acquire that fantastical alacrity that makes dulness disposable to the purposes of humorous malice, or interested imposture. In Ireland, a new great man could get the freedom of a science as easily as of a corporation, and become a doctor, by construction of the whole Encyclopædia; and great allowance might be made under such circumstances for indiscretions and mistakes, as long as they related only to himself; but the moment they become public mischiefs, they lose all pretensions to excuse—the very ambition of incapacity is a crime not to be forgiven; and however painful it may be to inflict, it must be remembered, that mercy to the delinquent would be treason to the public.

I can the more easily understand the painfulness of the conflict between charity and duty, because at this moment I am labouring under it myself; and I feel it the more acutely, because I am confident, that the paroxysms of passion that have produced these public discussions have been bitterly repented of. I think, also, that I should not act fairly if I did not acquit my learned opponents of all share whatsoever in this prosecution—they have too much good sense to have advised it; on the contrary, I can easily suppose Mr. Attorney-General sent for to give counsel and comfort to his patient; and after hearing no very concise detail of his griefs, his resentments, and his misgivings, methinks I hear the answer that he gives, after a pause of sympathy and reflection:—"No, sir, don't proceed in such a business; you'll only expose yourself to scorn in one country, and to detestation in the other. You know you durst not try him here, where the whole kingdom would be his witness. If you should attempt to try him there, where he can have no witness, you will have both countries upon your back. An English Jury would never find him guilty. You will only confirm the charge against yourself, and be the victim of an impotent abortive malice. If you should have any ulterior project against him, you will defeat that also; for those that might otherwise concur in the design, will be shocked and ashamed of the violence and folly of such a tyrannical proceeding, and will make a merit of protecting him, and of leaving you in the lurch.—What you say of your own feelings, I can easily conceive.—You think you have been much exposed by those letters; but then remember, my dear sir, that a man can claim the privilege of being made ridiculous or hateful by no publication but his own. Vindictive critics have their rights, as well as bad authors. The thing is bad enough at best; but, if you go on, you will make it worse—it will be considered an attempt to degrade the Irish bench and the Irish bar—you are not aware what a nest of hornets you are disturbing.—One inevitable consequence you don't foresee—you will certainly create the very thing in Ireland that you are so afraid of—a newspaper;—think of that, and keep yourself quiet.—And, in the mean time, console yourself with reflecting, that no man is laughed at for a long time; every day will procure some new ridicule that must supersede him."—Such, I am satisfied, was the counsel given; but I have no apprehension for my client, because it was not taken. Even if it should be his fate to be surrendered to his keepers—to be torn from his family

—to have his obsequies performed by torch-light—to be carried to a foreign land, and to a strange tribunal, where no witness can attest his innocence, where no voice that he ever heard can be raised in his defence, where he must stand mute, not of his own malice, but the malice of his enemies—yes, even so, I see nothing for him to fear—that all-gracious Being, that shields the feeble from the oppressor, will fill his heart with hope, and confidence, and courage; his sufferings will be his armour, and his weakness will be his strength; he will find himself in the hands of a brave, a just, and a generous nation—he will find that the bright examples of her Russels and her Sidneys have not been lost to her children; they will behold him with sympathy and respect, and his persecutors with shame and abhorrence; they will feel, too, that what is then his situation, may to-morrow be their own—but their first tear will be shed for him, and the second only for themselves—their hearts will melt in his acquittal; they will convey him kindly and fondly to their shore; and he will return in triumph to his country, to the threshold of his sacred home, and to the weeping welcome of his delighted family; he will find that the darkness of a dreary and lingering night hath at length passed away, and that joy cometh in the morning.—No, my Lords, I have no fear for the ultimate safety of my client. Even in these very acts of brutal violence that have been committed against him, do I hail the flattering hope of final advantage to him, but of better days and more prosperous fortune for this afflicted country—that country of which I have so often abandoned all hope, and which I have been so often determined to quit for ever.

“*Sœpe vale dicto multa sum deinde locutus,
Et quasi discedens oscula summa dabam,
Indulgens animo, pes tardus erat.*”

But I am reclaimed from that infidel despair—I am satisfied that while a man is suffered to live, it is an intimation from Providence that he has some duty to discharge, which it is mean and criminal to decline: had I been guilty of that ignominious flight, and gone to pine in the obscurity of some distant retreat, even in that grave I should have been haunted by those passions by which my life had been agitated—

“*Quæ cura vivos, eadem sequitur tellure repositos.*”

And if the transactions of this day had reached me, I feel how my heart would have been agonized by the shame of

the desertion; nor would my sufferings have been mitigated by a sense of the feebleness of that aid, or the smallness of that service which I could render or withdraw. They would have been aggravated by the consciousness that, however feeble or worthless they were, I should not have dared to thieve them from my country.—I have repented—I have staid—and I am at once rebuked and rewarded by the happier hopes that I now entertain. In the anxious sympathy of the public—in the anxious sympathy of my learned brethren, do I catch the happy presage of a brighter fate for Ireland. They see, that within these sacred walls the cause of liberty and of man may be pleaded with boldness and heard with favour. I am satisfied they will never forget the great trust, of which they alone are now the remaining depositories. While they continue to cultivate a sound and literate philosophy—a mild and tolerating Christianity—and to make both the sources of a just, and liberal, and constitutional jurisprudence, I see every thing for us to hope. Into their hands, therefore, with the most affectionate confidence in their virtue, do I commit these precious hopes. Even I may live long enough yet to see the approaching completion, if not in the perfect accomplishment of them. Pleased shall I then resign the scene to fitter actors—pleased shall I lay down my wearied head to rest, and say, “Lord, now lettest thou thy servant depart in peace, according to thy word; for mine eyes have seen their salvation.”

SPEECH,

BEFORE

THE LORD-LIEUTENANT & PRIVY COUNCIL OF IRELAND, 1790,

ON BEHALF OF THE COMMONS OF THE

CORPORATION OF THE CITY OF DUBLIN.

Right of Election of Lord Mayor.

Mr. CURRAN said,—

My Lords, I have the honour to appear before you as Counsel for the Commons of the Corporation of the Me-

tropolis of Ireland, and also for Mr. Alderman Howison, who hath petitioned for your approbation of him as a fit person to serve as Lord Mayor, in virtue of his election by the Commons to that high office; and in that capacity I rise to address you on the most important subject that you have ever been called upon to discuss. Highly interesting and momentous, indeed, my Lords, must every question be, that, even remotely and eventually, may affect the well-being of societies, or the freedom or the repose of nations: but that question, the result of which, by an immediate and direct necessity, must decide, either fatally or fortunately, the life or the death of that well-being, of that freedom, and that repose, is surely the most important subject on which human wisdom can be employed, if any subject on this side the grave can be entitled to that appellation.

You cannot, therefore, my Lords, be surprised to see this place crowded by such numbers of our fellow-citizens: heretofore they were attracted hither by a strong sense of the value of their rights, and of the injustice of the attack upon them; they felt all the magnitude of the contest, but they were not disturbed by any fear for the event; they relied securely on the justice of their cause, and the integrity of those who were to decide upon it. But the public mind is now filled with a fear of danger, the more painful and alarming, because hitherto unforeseen; the public are now taught to fear, that their cause may be of doubtful merits and disastrous issue; that rights, which they considered as defined by the wisdom and confirmed by the authority of written law, may now turn out to be no more than ideal claims, without either precision or security; that acts of Parliament themselves are no more than embryos of legislation, or at best but infants, whose first labours must be, not to teach, but to learn; and which, even after thirty years of pupilage, may have thirty more to pass under that guardianship which the wisdom of our policy has provided for the protection of minors.—Sorry am I, my Lords, that I can offer no consolation to my clients on this head; and that I can only join them in bewailing, that the question, whose result must decide upon their freedom or servitude, is perplexed with difficulties, of which we never dreamed before, and which we are now unable to comprehend. Yet surely, my Lords, that question must be difficult, upon which the wisdom of the representative of our dread Sovereign, aided by the learning of his Chancellor and his Judges, assisted also by the talents of the most conspicuous

of the nobles and the gentry of the nation, has been twice already employed, and employed in vain.—We know, my Lords, that guilt and oppression may stand irresolute for a moment ere they strike, appalled by the prospect of danger, or pierced with the sentiment of remorse; but to you, my Lords, it were presumption to impute injustice; we must therefore suppose that you have delayed your determination, not because it was dangerous, but because it was difficult to decide: and, indeed, my Lords, a firm belief of this difficulty, however undiscoverable by ordinary talents, is so necessary to the character which this august assembly ought to possess and to merit from the country, that I feel myself bound to achieve it by an effort of my faith, if I should not be able to do so by any exertion of my understanding.

In a question, therefore, so confessedly obscure as to baffle so much sagacity, I am not at liberty to suppose that certainty could be attained by a concise examination. Bending then, as I do, my Lords, to your high authority, I feel this difficulty as a call upon me to examine it at large; and I feel it as an assurance that I shall be heard with patience.

The Lord Mayor of this city hath, from time immemorial, been a Magistrate, not appointed by the Crown, but elected by his fellow-citizens. From the history of the early periods of this corporation, and a view of its charters and by-laws, it appears that the Commons had, from the remotest times, participated the important right of election to that high trust; and it was natural and just that the whole body of citizens, by themselves or their representatives, should have a share in electing those Magistrates, who were to govern them; as it was their birth-right to be ruled only by laws which they had a share in enacting.

The Aldermen, however, soon became jealous of this participation, encroached by degrees upon the Commons, and at length succeeded in engrossing to themselves the double privilege of eligibility and of election—of being the only body, out of which, and by which, the Lord Mayor could be chosen. Nor is it strange that in those times a Board, consisting of so small a number as twenty-four members, with the advantages of a more united interest, and a longer continuance in office, should have prevailed, even contrary to so evident principles of natural justice and constitutional right, against the unsteady resistance of competitors, so much less vigilant, so much more numerous, and therefore so much less united.—It is the common fate of the indolent to see their rights become a prey to the active.—The condition

upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime, and the punishment of his guilt.

In this state of abasement the Commons remained for a number of years; sometimes supinely acquiescing under their degradation; sometimes, what was worse, exasperating the fury, and alarming the caution of their oppressors, by ineffectual resistance:—the slave that struggles without breaking his chain, provokes the tyrant to double it, and gives him the plea of self-defence for extinguishing what at first he only intended to subdue.

In the year 1672, it was directed by one of the new rules, made by the Lord-Lieutenant and Privy Council, under the authority of the Act of Explanation, that “no person should be capable of serving in the office of Lord Mayor, until approved of by the Lord-Lieutenant and Council;” and this was a power given after the unhappy civil commotions in this country, to prevent any person who was not a loyal subject, from holding so important a trust; and upon this single ground, namely *disloyalty*, have you, my Lords, any authority to withhold your approbation.

From that time till the year 1759, no farther alteration appears to have taken place in the mode of electing the Chief Magistrate. At this latter period the act of the 33d G. II. was passed: the occasion and the object of that law are universally known. A city so increased in population, in opulence, and in consequence, could not tamely submit to have its corporate rights monopolized by a few, who were at once the tyrants of the metropolis, and the slaves of the government. Magistrates, elected by the Board of Aldermen, were in fact nominated by the Court, and were held in derision and abhorrence by the people. The public peace was torn by unseemly dissensions; and the authority of the law itself was lost in the contempt of the Magistrate. The legislature felt itself called upon to revive the constitution of the city, to restore and ascertain the rights of the Commons, and thereby to redeem the metropolis from the fatal effects of oppression, of servitude, and of anarchy.—In saying this, my Lords, I am founded on the preamble of the act itself:—
 “Whereas dissensions and disputes have, from a dissatisfaction as to some parts of the present constitution of the Corporation of the city of Dublin, arisen, and for some years past subsisted among several citizens of the said city, to the weakening the authority of the Magistrates thereof,

“who are hereby rendered the less able to preserve the
 “public peace within the said city. Therefore, for remedy-
 “ing the aforesaid mischiefs and inconveniences, and for
 “restoring harmony and mutual good-will among the citizens
 “of the said city, and for preserving peace and good order
 “therein: At the humble petition of the Lord Mayor,
 “Sheriffs, Commons and Citizens, of the city of Dublin, be it
 “enacted,” &c.

Here are stated the mischief acknowledged, and the remedy proposed:—with this view, the statute has ascertained the constituent parts of the Corporation, their respective members, their rights, and the mode of their election, with so minute and detailed an exactness, as even to enact many of those regulations which stood upon the authority of the new rules, or the ancient charters and by-laws, and in which no alteration whatsoever was intended to be made; and this it did, that the city might not be left to explore her rights, by uncertain deduction from obscure or distant sources, but that she might see the whole plan in a single view, comprised within the limits of a single statute, and that so intelligibly to every common understanding, as to preclude all possibility of doubt, and thereby all further danger of cavil or dissension.

For this purpose it enacts, “That the Common Council of
 “the city of Dublin, consisting of the Lord Mayor and
 “twenty-four Aldermen, sitting apart by themselves as
 “heretofore; and also of the Sheriffs of the said city for the
 “time being, and Sheriffs peers not exceeding forty-eight,
 “and of ninety-six freemen, who are to be elected into the
 “said Common Council, out of the several Guilds or Cor-
 “porations of the said city, in manner hereafter mentioned, be
 “and for ever hereafter shall be deemed and taken to be the
 “Common Council of the said city, and the representative
 “body of the Corporation thereof.”

It then prescribes the mode of electing representatives of the several guilds, and the time of their service, in which the right of the Commons is exclusive, and without control.

It then regulates the election of Sheriffs. The Commons nominate eight freemen, the Mayor and Aldermen elect two from that number.

Then of Aldermen. The Mayor and Aldermen nominate four Sheriffs peers: the Commons elect one of them.

And here, my Lords, give me leave to observe, that this exclusive right of electing their own representatives, and this participation in the election of their Magistrates, is given to the popular part of the Corporation, to be exercised as all

right of suffrage is exercised by the constitution of this country; that is, according to the dictates of judgment or of affection, and without any authority vested in any human tribunal, of catechising as to the motives that may operate on the mind of a free elector, in the preference of one candidate, or the rejection of another.

I will now state to your Lordships that part of the statute which relates to the subject of this day.

“ And be it enacted by the authority aforesaid, That the
 “ name of every person who shall hereafter be elected by
 “ the Lord Mayor and Aldermen of the said city, or the
 “ usual quorum of them, to serve in the office or place of
 “ Lord Mayor of the said city, shall be returned by them to
 “ the Commons of the Common Council of the said city, for
 “ their approbation; without which approbation, such person
 “ shall not be capable of serving in the office or place of
 “ Lord Mayor: and if it shall happen, that the said Commons
 “ shall reject or disapprove of the person so returned to
 “ them, the Lord Mayor and Aldermen of the said city,
 “ or the usual quorum of them, shall from time to time elect
 “ another person to serve in the office or place of Lord
 “ Mayor of the said city, and shall from time to time return
 “ the name of the person so by them elected, to the Commons
 “ of the Common Council of the said city, for their approba-
 “ tion, and so from time to time, until the said Commons
 “ shall approve of the person returned by the Lord Mayor
 “ and Aldermen of the said city, or the usual quorum of
 “ them; provided always, that such election into the said
 “ office of Lord Mayor shall be of some person from among
 “ the Aldermen, and that the Commons shall approve of
 “ some one person so elected and returned to them for their
 “ approbation.

“ And for the preventing the mischiefs and inconveniences
 “ which may arise from a failure of the Corporation of the
 “ said city in the appointment of necessary officers; be it
 “ enacted by the authority aforesaid, That if either the Lord
 “ Mayor and Aldermen, or the Commons of the said city,
 “ shall omit or refuse to assemble at or within the usual
 “ times for the electing the Lord Mayor, Aldermen, and
 “ Sheriffs, respectively; or being assembled, shall omit or
 “ refuse to do what is hereby required to be done by them
 “ respectively, for the election and appointment of the said
 “ officers; then, and as often as the case shall happen, it
 “ shall and may be lawful for the Commons, in case such
 “ default shall be in the Lord Mayor and Aldermen, or for

“ the Aldermen, in case such default shall be in the Com-
 “ mons, or for the usual quorum of them respectively, with-
 “ out any summons for that purpose, to assemble themselves
 “ at the Tholsel of the said city, on next following day
 “ (not being Sunday); or in case the same shall happen
 “ to be on Sunday, then on the Monday next following, and
 “ then and there to elect the said officers respectively, as the
 “ case shall require; and every such election, so made, shall
 “ and is hereby declared to be valid and effectual to all in-
 “ tents and purposes.

“ Provided always, and be it further enacted, by the
 “ authority aforesaid, That every election by the said several
 “ guilds, for the constituting of their representatives in the
 “ Common Council of the said city, and every election made,
 “ or approbation given, by the Commons of the said Com-
 “ mon Council, by virtue of this act, shall be by ballot, and
 “ not otherwise.

“ Provided always, that notwithstanding any thing in this
 “ act contained, no person or persons shall be enabled or
 “ made capable to serve in or execute the office or place
 “ of Lord Mayor or Sheriff, Recorder or Town Clerk, of the
 “ said Corporation, until he or they shall respectively be ap-
 “ proved of by the Lord-Lieutenant, or other Chief Gover-
 “ nor or Governors, and Privy Council of this kingdom, in
 “ such manner as hath heretofore been usual.”

Under this act, at the Easter Quarter Assembly, held on
 the 16th day of April, 1790, the Lord Mayor and Aldermen
 sent down the name of Mr. Alderman James to the Com-
 mons, who rejected him; the Lord Mayor and Aldermen
 elected seven other persons, who were sent down to the
 Commons, and successively rejected; the Lord Mayor and
 Aldermen then broke up their meeting, without sending
 down the name of any other person, or conceiving that they
 had any right whatsoever to question the Commons touch-
 ing their reasons for rejecting those who had been so re-
 jected.

The Sheriffs and Commons, thinking that the Lord Mayor
 and Aldermen had omitted to do what was required of them
 by the statute to do, namely, to proceed by sending down
 the name of another person, and so from time to time, &c.
 assembled and elected Mr. Alderman Howison, whom they
 returned for the approbation of this Board. The Lord Mayor
 and Aldermen returned Mr. James, also, as duly elected;
 the claims of both parties were heard by their Counsel, and
 this Board did not think proper to approve of either candi-

date; the city proceeded to a new election; the name of Mr. James was again sent down, and rejected as before; the message was then sent to demand of the Commons the reason of their disapprobation; they declined giving any answer, but that it was their legal right to do as they had done: Mr. James was accordingly returned as duly elected by the Lord Mayor and Aldermen; the Sheriffs and Commons, as before, elected and returned Mr. Howison; the claims of the candidates were again debated before this Honourable Board, but nothing was decided.

A third Assembly has since been held, in which the Lord Mayor and Aldermen have acted as before, and returned Mr. James; the Sheriffs and Commons have elected Mr. Howison, who has petitioned for your approbation, in virtue of that election.

I trust, my Lords, you will think it now time to decide the question;—my client calls for that decision; his opponents cannot wish for longer procrastination; in the progress of their pretensions hitherto, they have found the fears, and odium, and reprobation of the public increasing upon them.

It is full time to compose the disquietude of that public:—the people do not always perceive the nature or the magnitude of a question at a single glance, but they now completely comprehend its merits and importance; they are now satisfied that every thing that can be of value to men may be lost or secured by the event of the present contest.

The claim of my clients has been impeached upon an alleged meaning of this act, and also upon certain facts stated by the learned Counsel on the other side, and admitted as proved; of which facts, and the arguments upon them, I will take notice in their proper place.

As to the invective so liberally bestowed upon my fellow-citizens, it best becomes the unhired voluntary advocate of their rights to pass them without remark.* I feel them of too high respect to be protected by panegyric, or avenged by invective; I shall therefore treat those sallies of the learned gentleman's imagination as I would the flights of their doves—they come abroad only *animo revertendi*, and ought to be suffered to return unmolested to their owners.

The right of Mr. Howison is confessed by the Counsel for his opponents, to be warranted by the letter of the law. The Mayor and Aldermen sent down Mr. James; he was re-

* Alluding to some abusive passages contained in the speech of Dr. Dui-genan, who appeared before the Council as Advocate for Alderman James and the Board of Aldermen.

jected by the Commons, who sent to request that another might be sent down; the Board did not send down another, but demanded a reason for the rejection of Mr. James, which, by the letter of the act, they were certainly not warranted in doing. But it is said that, by the sound construction of that law, the Commons have a right to reject only for good cause; and that having refused to assign such cause, they have been guilty of default, which has transferred the sole right of election to the Lord Mayor and Aldermen, who have accordingly elected Mr. James.

Lord Chancellor.—The question here is, “Can a mere “right of rejection or approbation supersede a right of “election?”

Mr. Curran.—If I can satisfy this Board that that is not the question, I trust I shall be heard with patience as to what I conceive to be the question.

I say, my Lords, that is not the question; because,—

1st. The mode and the rights of election in this case turn not upon any general doctrine of the common law, but upon an express statute, which statute would never have been made, had it not been intended by the legislature to prescribe rules of direction, different from those of the common law.

2dly. The rule alluded to relates to officers in corporations, as in the case cited, who have a naked authority to admit, but can reject only for a plain defect of right in the candidate; and who, if a mandamus is directed to him requiring him to admit, must return a legal cause of his disapprobation, that the truth of the fact, or the validity of the cause, may be duly tried.

But there is clearly no analogy between such an officer and the great body of the Commons of this city.

1st. That officer has no elective authority whatsoever;—it is admitted that the act gives to the Commons at least a concurrent elective control, and, if the Mayor and Aldermen “make default,” an exclusive right to elect, which shall be “valid to all intents and purposes!”

2dly. That officer has a sort of judicial power, which is well placed in a single permanent individual, who is capable of, and responsible for, the exercise of a judicial power;—but it would be monstrous to give a judicial power to a fluctuating multitude; for they cannot be presumed capable of exercising it, nor could they be responsible for such exercise by any course of law; for, suppose a mandamus directed to them requiring them to approve, how is it pos-

sible to make any true return to such writ? How can any man assign a cause for that rejection which the law requires to be by ballot, and consequently secret? Or suppose a party of the Commons are practised upon to return a cause, and that designedly an invalid one, how shall the residue of the Commons be able to justify themselves by alleging the true and valid cause of their disapprobation?

To try it therefore by such a rule, is to try it by a rule clearly having no general analogy to the subject, nor even a possible application, except so far only as it begs the question.

My Lords, it is absurd to ask how a simple power of approbation or rejection for cause shall be controlled, unless it is first determined whether the Commons have that simple power only, or whether they have, what I think they clearly have under the statute, a peremptory right of approving or rejecting, without any control whatsoever.

If they have but a simple right to reject for cause, and ought to have assigned such cause under the law, they have been guilty of a default, and the sole right to elect devolves to the Board of Aldermen, who, of course, have duly elected. If they are not bound to assign such a reason, manifestly the Aldermen have acted against law, and by their default have lost this power, and the Commons have duly elected Mr. Howison.

Now, my Lords, in examining this question, you must proceed by the ordinary rule of construction, applicable alike to every statute; that of expounding it by the usual acceptation and natural context of the words in which it is conceived.—Do the words then, my Lords, or the natural context of this act, describe a limited power of rejecting only for cause to be assigned, or a peremptory power of rejecting without any such cause?—says the act, “If it shall happen that the Commons shall reject or disapprove:”—the law ascribes this accidental rejection in language most clearly applicable to the acts of men assembled, not as judges, but as electors; not to judge by laws which they have never learned, but to indulge their affections, or their caprice; and therefore justly speaks of a rejection, not the result of judgment, but of chance.

“If it shall happen that they shall *reject* or *disapprove*:”—my Lords, you cannot say these words are synonymous; in acts, every word must have its meaning, if possible. “To *reject*,” contra-distinguished to “*disapprove*,” is to reject by an act of the will; to disapprove, supposes some act of the judgment also.

The act then clearly gives a right of rejecting, distinct from disapprobation, which by no possibility can be other than a peremptory right, without limit or control.

But here, if a reason must be had, the law would naturally prescribe some mode of having it demanded:—this, however, unluckily, cannot be done without a direct violation of the act, which enjoins, that the two bodies shall “sit apart, and by themselves, as heretofore;” but at least it might have left the Board of Aldermen the means of making a silent struggle for the approbation of their favourite candidate, by sending him down again for reconsideration. But, on the contrary, the law is express, that “if the Commons shall happen to reject or disapprove the first,” they must then proceed to send down the name, not of *him*, but of *another*, and so on.—How long, my Lords? Until a good reason shall be assigned for the rejection of the first? No, my Lords; it is “until the Commons shall approve of *some one person*, so sent down;” and to this right of rejection, which the law has supposed might happen so often, the law has opposed the limit of a single proviso only, applicable enough to a peremptory right of rejection, but singular indeed if applied to rejection for cause:—“Provided always, that such election into the said office of Lord Mayor shall be of some person from among the Aldermen, and that the Commons shall approve of some one person so elected and returned to them for their approbation.”—A rejection without cause to be assigned, being a mere popular privilege, may be limited in its extent by reasons of expediency; but a judicial power of rejecting for legal cause cannot be so controlled, without the grossest absurdity. It is like a peremptory challenge, which is given to a prisoner by the indulgence of the law, and may be therefore restricted within reasonable bounds. But a challenge for cause is given of common right, and must be allowed as often as it shall be found to exist, even though the criminal should remain for ever untried, and the crime for ever unpunished.

Permit me now, my Lords, to try this construction contended for by another test. Let us put it into the form of a proviso, and see how it accords with the proviso which you find actually expressed: “Provided always, that the Commons shall be obliged to approve of the first person whose name shall be sent down to them, unless they shall assign good legal cause for their rejection.” The proviso expressed is, “Provided that they shall approve,” not of the first person, but “of some one person so elected.” Can any

thing be more obvious than the inconsistency of two such provisos?

Give me leave, my Lords, to compare this supposed proviso with the enacting part of the statute. It says, that if the first person sent down be rejected, the Lord Mayor and Aldermen shall "then proceed to elect another, and send down his name;" but if this supposed proviso were to make a part of the act, they would not be obliged to send down "another name," but would be authorized to insist upon the claim of the first candidate, by demanding a reason for his rejection. This supposed proviso therefore, and of course this superinduced construction, are directly incompatible both with the body and the proviso of the statute itself.

But see further, my Lords, what you do by such a construction; you declare that the benefit of this statute, which is given expressly to the Commons, is given upon a tacit condition, by the breach of which that benefit is utterly forfeited. Do you think, my Lords, you shall act consistently with the spirit of the constitution, or of the law of Ireland, if you declare and enforce a cause of forfeiture written in no law whatsoever, and devised only by your own interpretation? or do you not feel, my Lords, to what a wretched state of servitude the subject is reduced, if criminality and forfeiture are to depend, not on the plain and permanent meaning of the law, but upon the dreams and visions of capricious interpretators? If a constructive cause of forfeiture can be warranted, by which any part, or any individual, of a corporation shall be adjudged to have lost their franchise; by the same principle may a constructive offence and forfeiture be devised, by which a whole corporation shall be stripped of its charter. Says the law, "If they shall omit or refuse to do what they are required to do by this act," they lose the benefit thereof: but this curious construction would declare, that the Commons have forfeited the benefit of the statute, by refusing to do that which they are not required by this or any other act to do.

If, then, my Lords, you call this power of rejection or disapprobation, a power to be regulated by technical maxims of the common law, and to be exerted only for legal cause to be assigned; what is it, but to give the law a meaning which the legislature never spoke? what is it, but to nullify a statute made for the benefit of the people, by an arbitrary construction, supported only by the most pitiful of all argumentative fallacies, an assumption of what cannot be proved?

or, to describe it in terms more suited to its demerit, that mixture of logical poverty, and ethical meanness, which stoops to beg what it has not industry to acquire, nor craftiness to steal, nor force to extort.

But see, my Lords, whether this infallible rule of the common law, upon which the whole merits of this case have been rested, will not, if admitted, be subversive of the authority which it would seem to support.

By one of the new rules, and by a clause in this act of Parliament, no person can serve as Mayor without the approbation of this Board. This power of approving was notoriously given for the security of the government, and hath now for upwards of a century been exercised upon no other ground whatever. By a clause in this act, no person can serve as Mayor without the approbation of the Commons; and this right of approbation, as notoriously, was given to increase the power of the people; and the Commons have accordingly so exercised it uniformly for thirty years:—it is observable that this right of approbation is given to them in language more emphatical than it is to your Lordships, but for argument's sake I will suppose the words the same. Now, if by the common law all right of approving or rejecting can be founded only upon legal cause to be assigned, what becomes of your Lordships' decision? You have already refused your approbation to the two present petitioners, having both exactly the same pretensions to your approbation which they have at present; you have refused your approbation, and you have assigned no cause: but let me ask a much more material question,—what, in that case, becomes of your Lordships' power? The same words in the same act of Parliament cannot have two different constructions: if the Commons are bound to assign a legal cause for rejection, you, my Lords, must be similarly bound; and the law will then coerce the Commons, and coerce your Lordships, in a manner directly contrary to the intention of the act; it will then cease to be a law for the protection of liberty on the one hand, or the security of government on the other; for, being equally confined to a rejection for legal cause, the Commons may be obliged to approve a candidate, not legally disqualified, though an enemy to their liberty; and your Lordships be restrained from rejecting a candidate, not legally disqualified, though an enemy to the state. See, then, my Lords, to what you will be reduced: you must either admit that the statute has confined you both equally to decide upon the mere question of legal capacity

or incapacity only, of which they are clearly incapable of judging, and on which it is here admitted you are incompetent to decide, and has thus elevated them and degraded your Lordships from good citizens and wise statesmen into bad judges; or if, in opposition to this construction, you do your duty to your Sovereign, and refuse to admit to the Magistracy a man whom you have a good reason to believe disaffected to the state, though subject to no legal incapacity:—what do you do, my Lords? You give two different expositions to the same words in the same act of Parliament; that is, an enlarged exposition in favour of yourselves, and a confined one against the people; that is, in fact, you are driven to incur the odium of repealing the law as against the Crown, and enforcing it against the subject. See, on the other hand, my Lords, how, by the plain and hitherto adopted construction, all these mischiefs are avoided. You judge of the candidate with respect to his loyalty—the Commons, with regard to his integrity and independence—neither of you with any relation to his legal capacity or incapacity; thus will every object of the law, of the people, and of the government, be completely obtained: the Commons will enjoy their power in deciding upon the popularity of the candidate for Magistracy, you will do your duty in deciding upon his loyalty, and the Courts of Justice will retain their natural exclusive jurisdiction in every question that can touch his legal qualification; thus will it be impossible for any man to have the power of the city in his hands, who is not free from all legal objections, and who is not also deserving the confidence of his Sovereign, as well as of his fellow-subjects.

Thus far, my Lords, have I examined this law, with respect to the present question, by the general rule of construction, applicable generally to all statutes, that is, of seeking for the meaning of the legislature in the ordinary and natural context of the words they have thought proper to adopt, and this I thought I might do with still more confidence in a law professedly made for the direction of men unacquainted with legal difficulty, unversed in the subtilty of legal distinction, and acting in a situation which precludes them from the advantage of all legal assistance; but I am aware that what hath been satisfactory to my mind, hath not been so to some of your Lordships. I feel myself, therefore, obliged to enter upon a more minute examination of this statute, upon principles and circumstances peculiar to itself.

I am sorry, my Lords, to trespass upon your patience,

but I am speaking upon a subject, in which if I do not succeed, the people of this country will have lost what is of infinitely more value than any time, however precious, that may be wasted in their defence.

This act, my Lords, professes to be a remedial act, and as such must be construed according to the rules peculiar to remedial laws; that is, in three points of view:—first, the former state of the law; secondly, the mischief of such former state; and, thirdly, the remedy proposed for the cure of that mischief.

As to the first point:—at the time of this statute, the Lord Mayor and Aldermen exercised the exclusive power of election to the Chief Magistracy, without any interference of the Commons. The immediate mischief of such a constitution, with respect to the metropolis itself, I have touched upon before; the people were borne down; the magistracy was depraved; the law was relaxed; and the public tranquillity at an end. These mischiefs were more than enough to induce the citizens of Dublin to call loudly, as they did, upon the justice of the legislature for parliamentary redress. But the wisdom of that legislature formed an estimate of the mischief from considerations that probably did not enter into the minds of the contending parties; namely, from the then state of Ireland, as an individual, and as a connected country; as an individual, depressed in every thing essential to the support of political or civil independency; depressed in commerce, in opulence, and in knowledge; distracted by that civil and religious discord, suggested by ignorance and bigotry, and inflamed by the artifice of a cruel policy, which divided in order to destroy, conscious that liberty could be banished only by disunion, and that a generous nation could not be completely stripped of her rights, until one part of the people was deluded into the foolish and wicked idea, that its freedom and consequence could be preserved or supported only by the slavery or depression of the other. In such a country, it was peculiarly necessary to establish at least some few incorporated bodies, which might serve as great repositories of popular strength; our ancestors learned from Great Britain to understand their use and their importance; in that country, they had been hoarded up with the wisest forecast, and preserved with a religious reverence, as an unfailing resource against those times of storm, in which it is the will of Providence that all human affairs should sometimes fluctuate; and as such, they had been found at once a protection to the people, and a

security to the crown. My Lords, it is by the salutary repulsion of popular privilege, that the power of the monarchy is supported in its sphere; withdraw that support, and it falls in ruin upon the people; but it falls in a ruin no less fatal to itself, by which it is shivered to pieces.

Our ancestors must therefore have been sensible, that the enslaved state of the Corporation of the metropolis was a mischief that extended its effects to the remotest borders of the island. In the confederated strength, and the united councils of great cities, the freedom of the country may find a safeguard which extends itself even to the remote inhabitant, who never put his foot within their gates.

But, my Lords, how must these considerations have been enforced by a view of Ireland, as a connected country, deprived as it was of almost all the advantages of an hereditary monarch; the father of his people residing at a distance, and the paternal beam reflected upon his children through such a variety of *mediums*, sometimes too languidly to warm them, sometimes so intensely as to consume; a succession of governors differing from one another in their tempers, in their talents, and in their virtues, and of course in their systems of administration; unprepared in general for rule by any previous institution, and utterly unacquainted with the people they were to govern, and with the men through whose agency they were to act. Sometimes, my Lords, 'tis true, a rare individual has appeared among us, as if sent by the bounty of Providence in compassion to human miseries, marked by that dignified simplicity of manly character, which is the mingled result of an enlightened understanding, and an elevated integrity; commanding a respect that he laboured not to inspire, and attracting a confidence which it was impossible he could betray.* It is but eight years, my Lords, since we have seen such a man amongst us, raising a degraded country from the condition of a province to the rank and consequence of a people worthy to be the ally of a mighty empire, forming the league that bound her to Great Britain on the firm and honourable basis of equal liberty and a common fate, "standing and falling with the British empire;" and thus stipulating for that freedom, which alone contains the principle of her political life, in the covenant of her federal connection. But how short is the continuance of those auspicious gleams of public sunshine! how soon are they passed, and perhaps for ever! In what rapid and fatal revolution has Ireland seen the talents and

* The Duke of Portland is here alluded to.

the virtues of such men give place to a succession of sordid parade and empty pretension, of bloated promise and lank performance, of austere hypocrisy and peculating economy.* Hence it is, my Lords, that the administration of Ireland so often presents to the reader of her history the view, not of a legitimate government, but rather of an encampment in the country of a barbarous enemy; where the object of the invader is not dominion, but conquest; where he is of course obliged to resort to the corrupting of clans, or of single individuals, pointed out to his notice by public abhorrence, and recommended to his confidence only by a treachery so rank and consummate, as precludes all possibility of their return to private virtue or to public reliance; and, therefore only, put into authority over a wretched country, condemned to the torture of all that petulant unfeeling asperity, with which a narrow and malignant mind will bristle in unmerited elevation; condemned to be betrayed, and disgraced, and exhausted, by the little traitors that have been suffered to nestle and to grow within it, making it at once the source of their grandeur and the victim of their vices, reducing it to the melancholy necessity of supporting their consequence, and of sinking under their crimes, like the lion perishing by the poison of a reptile, that finds shelter in the mane of the noble animal, while it is stinging him to death.

By such considerations as these, my Lords, might the makers of this statute have estimated the danger to which the liberty of Ireland was exposed; and of course the mischief of having that metropolis enslaved, by whose independency alone those dangers might be averted. But in this estimate they had much more than theory, or the observation of foreign events, to show them, that the rights of the sovereign and of the subject were equally embarked in a common fate with that independency. When in the latter part of the reign of Queen Anne, an infernal conspiracy was formed, by the then Chancellor (Sir Constantine Phipps), and the Privy Council, to defeat that happy succession which for three generations hath shed its auspicious influence upon these realms, they commenced their diabolical project with an attack upon the corporate rights of the citizens of Dublin, by an attempt to impose a disaffected Lord Mayor upon them, contrary to the law. Fortunately, my Lords, this wicked conspiracy was defeated by the virtue of the people; I will

* The Duke of Rutland, and the Marquis of Buckingham, followed the Duke of Portland in the administration of Ireland.

read to your Lordships the resolutions of a Committee of the House of Commons on the subject.

“First. Resolved, that it is the opinion of this Committee, that soon after the arrival of Sir Constantine Phipps, late Lord Chancellor, and one of the Lords Justices in this kingdom, in the year 1710, a design was formed and carried on to subvert the constitution and freedom of elections of Magistrates of Corporations within the new rules, in order to procure persons to be returned for Members of Parliament, disaffected to the settlement of the Crown, or his Majesty and his royal issue.

“Secondly. Resolved, that it is the opinion of this Committee, that, in pursuance of that design, indirect and illegal methods were taken to subvert the ancient and legal course of electing Magistrates in the city of Dublin.

“Thirdly. Resolved, that it is the opinion of this Committee, that the said Sir Constantine Phipps, and those engaged in that evil design, in less than five months, in the year 1711, procured six Aldermen duly elected Lord Mayors, and fourteen substantial citizens duly elected Sheriffs, and well known to be zealously affected to the Protestant succession, and members of the established church, to be disapproved, on the pretence that Alderman Robert Constantine, as senior Alderman, who had not been Mayor, had a right to be elected Lord Mayor.

“Fourthly. Resolved, that it is the opinion of this Committee, that the senior Alderman, who had not served as Mayor, had not any right by charter, usage, or by law, in force in the city of Dublin, as such, to be elected Lord Mayor.

“Fifthly. Resolved, that it is the opinion of this Committee, that the said Sir Constantine Phipps, and his accomplices, being unable to support the pretended right of seniority, did, in the year 1713, set up a pretended custom or usage for the Mayor in being to nominate three persons to be in election for Lord Mayor, one of whom the Aldermen were obliged to choose Lord Mayor.”

Lord Chancellor.—Can you think, Mr. Curran, that these resolutions of a Committee of the House of Commons can have any relation whatsoever to the present subject?

Mr. Curran.—I hope, my Lords, you will think they have much relation indeed to the subject before you. The weakness of the city was the mischief which occasioned the act of Parliament in question; to give the city strength, was the remedy. You must construe the law so as to suppress the

former, and advance the latter. What topics then, my Lords, can bear so directly upon the point of your inquiry, as the perils to be apprehended from that weakness, and the advantages to be derived from that strength? What argument then can be so apposite, as that which is founded on undeniable facts? Or what authority so cogent, as the opinion of the representative wisdom of the nation, pronounced upon those facts, and transmitted to posterity upon record? On grounds like those, for I can conceive no other, do I suppose the rights of the city were defended in the time to which I have alluded; for it appears by the records which I have read, that the city was then heard by her Counsel; she was not denied the form of defence, though she was denied the benefit of the law. In this very chamber did the Chancellor and Judges sit with all the gravity and affected attention to arguments in favour of that liberty and those rights which they had conspired to destroy. But to what end, my Lords, offer argument to such men? A little and a peevish mind may be exasperated, but how shall it be corrected by refutation? How fruitless would it have been to represent to that wretched Chancellor, that he was betraying those rights which he was sworn to maintain; that he was involving a government in disgrace, and a kingdom in panic and consternation; that he was violating every sacred duty, and every solemn engagement, that bound him to himself, his country, his sovereign, and his God!—Alas, my Lords, by what argument could any man hope to reclaim or dissuade a mean, illiberal, and unprincipled minion of authority, induced by his profligacy to undertake, and bound by his avarice and vanity to persevere? He would probably have replied to the most unanswerable arguments, by some contumelious and unmeaning apophthegm, delivered with the fretful smile of irritated self-sufficiency and disconcerted arrogance; or, even if he could be dragged by his fears to a consideration of the question, by what miracle could the pigmy capacity of a stunted pedant be enlarged to a reception of the subject? The endeavour to approach it would have only removed him to a greater distance than he was before: as a little hand that strives to grasp a mighty globe is thrown back by the reaction of its own effort to comprehend.—It may be given to a Hale or a Hardwicke to discover and retract a mistake—the errors of such men are only specks that arise for a moment upon the surface of a splendid luminary—consumed by its heat, or irradiated by its light, they soon purge and disappear; but the perverse-

ness of a mean and narrow intellect, are like the excrescences that grow upon a body naturally cold and dark—no fire to waste them, and no ray to enlighten, they assimilate and coalesce with those qualities so congenial to their nature, and acquire an incorrigible permanency in the union with kindred frost and kindred opacity. Nor, indeed, my Lords, except where the interest of millions can be affected by the folly or the vice of an individual, need it be much regretted, that, to things not worthy of being made better, it hath not pleased Providence to afford the privilege of improvement.

Lord Chancellor.—Surely, Mr. Curran, a gentleman of your eminence in your profession must see that the conduct of former Privy Councils has nothing to do with the question before us. The question lies in the narrowest compass; it is merely whether the Commons have a right of arbitrary and capricious rejection, or are obliged to assign a reasonable cause for their disapprobation? To that point you have a right to be heard; but I hope you do not mean to lecture the Council?

Mr. Curran.—I mean, my Lords, to speak to the case of my clients, and to avail myself of every topic of defence which I conceive applicable to that case. I am not speaking to a dry point of law, to a single Judge, and on a mere forensic subject; I am addressing a very large auditory, consisting of co-ordinate members, of whom the far greater number is not versed in law: were I to address such an audience on the interests and rights of a great city, and address them in the hackneyed style of a pleader, I should make a very idle display of profession, with very little information to those I address, or benefit to those on whose behalf I have the honour to be heard. I am aware, my Lords, that truth is to be sought only by slow and painful progress; I know also that error is in its nature flippant and compendious—it hops with airy and fastidious levity over proofs and arguments, and perches upon assertion, which it calls conclusion.

My Lords, I regret the necessity which I am under of trespassing so much on that indulgent patience with which I feel I am so honoured; let me not, however, my Lords, be thought so vainly presumptuous as to suppose that condescension bestowed merely upon me; I feel how much more you owe it to your own dignity and justice, and to a full conviction that you could not be sure of deciding with justice, if you did not hear with temper.

As to my part, my Lords, I am aware that no man can convince by arguments which he cannot clearly comprehend, and make clearly intelligible to others; I consider it, therefore, not only an honour, but an advantage, to be stopped when I am not understood. So much confidence have I in the justice of my cause, that I wish any noble Lord in this assembly would go with me step by step through the argument: one good effect would inevitably result, I should either have the honour of convincing the noble Lord, or the public would, by my refutation, be satisfied that they are in the wrong: with this wish, and, if I may presume to say so, with this hope, I will proceed to a further examination of the subject.

It is a rule of law, that all remedial acts shall be so construed as to suppress the mischief, and advance the remedy. Now a good cause of rejection can mean only a legal cause; that is, a cause working an incapacity in the person executing a corporate franchise; that is, of course, such a cause as would justify a judgment of ouster against him by a Court of law, if actually in possession of such franchise; or warrant his amoval, by an act of the corporation itself. There are three sorts of offences for which a corporator may be amoved; first, such as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to exercise any public franchise; secondly, such as are *only* against his oath, and the duty of his office as a corporator, and amount to a breach of the tacit condition annexed to his franchise or office; the third sort of offence for which an officer or corporator may be displaced, is of a mixed nature, as being an offence, not only against the duty of his office, but also a matter indictable at common law.

For the first species of offences, a corporation can in no case amove without a previous indictment and conviction in a Court of common law. For the other offences, it has a power of trial, as well as a motion.

To this let me add, that the office of Alderman is as much a corporate office as that of Lord Mayor, and the legal cause that disqualifies the one must equally disqualify the other; but the person chosen to be Mayor must be an Alderman at the time of his election, and the law, of course, cannot suppose a man, actually in possession of a corporate franchise, to labour under any corporate or legal incapacity: does it not then, my Lords, follow irresistibly, that the law cannot intend to confine the power of rejection, which it expressly

gives, to a legal incapacity, which without the grossest absurdity it cannot suppose to exist?

But let us assume, for argument's sake, however in defiance of common sense, that the legislature did suppose it possible, that such an incapacity might exist; what new privilege does a power of rejection for such cause give to the Commons? And it is admitted by the learned Counsel, "that this statute made a great enlargement, indeed, in their powers." Before the act was made, any corporator, subject to a personal disqualification, was removable by the ordinary course of law; to give the Commons, therefore, only a power of preventing a man, legally disqualified, from serving a corporate office, was giving them nothing which they had not before.

What sort of construction, then, my Lords, must that be, which makes the legislature fall into the ridiculous absurdity of giving a most superfluous remedy for a most improbable mischief? And yet it is not in a nursery of children, nor a bedlam of madmen; but it is in an assembly, the most august that this country knows of, that I am obliged to combat this perversion of sense and of law. In truth, my Lords, I feel the degradation of gravely opposing a wild chimera, that could not find a moment's admission into any instructed or instituted mind; but I feel also, that they who stoop to entertain it only from the necessity of exposing and subduing it, cannot at least be the first objects of that degradation.

Let me, then, my Lords, try this construction contended for, by another test. If the act must be construed so as to say that the Commons can reject only for a legal cause to be assigned, it must be so construed, as to provide for all that is inseparably incident, and indispensably necessary to carrying that construction into effect; that is, it must provide a mode, in which four things may be done:—

First, a mode in which such cause shall be assigned.

Secondly, a mode in which the truth of the fact of such cause shall be admitted or controverted.

Thirdly, a mode by which the truth of such fact, if controverted, shall be tried; and,

Fourthly, a mode by which the validity of such cause, when ascertained in fact, shall be judged of in law.

To suppose a construction requiring a reason to be assigned, without providing for these inevitable events, would be not the error of a lawyer, but would sink beneath the imbecility of an infant.

Then, my Lords, as to the first point:—how is the cause to be assigned? The law expressly precludes the parties from any means of conference, by enacting, that they shall “sit apart and by themselves.” The same law says, that “the rejection or disapprobation shall be by ballot only, “and not otherwise.” Now when the law gives the Commons a power of rejecting by ballot, it gives each individual a protection against the enmity which he would incur from the rejected candidate; but if you say that the rejection shall be null and void, unless fortified by the assignment of legal cause, see, my Lords, what you labour to effect; under this supposed construction, you call upon the voters who reject by a secret vote, to relinquish that protection of secrecy which the law expressly gives them; unless, my Lords, the sagacity that has broached this construction can find out some way, by which the voter can justify why he voted against a particular candidate, without disclosing also that he did in fact vote against that candidate.

Let me, however, suppose that inconsistency reconciled, and follow the idea.

The name of Alderman James is sent down, and the Commons certify his rejection; an ambassador is then sent to demand of the Commons, the cause of this rejection;—they answer, “Sir, we have rejected by ballot, and they who have voted against him, are protected by the law from discovering how they voted”—to which the ambassador replies, “very true, gentlemen; but you mistake their Worships’ question: they do not desire you to say who rejected Mr. James, for in that they well know they could not be warranted by law; they only desire to know why a majority has voted against Mr. Alderman James?”—This, my Lords, I must suppose to be a mode of argument not unbecoming the sagacity of Aldermen, since I find it gives occasion to a serious question before so exalted an assembly as I have now the honour to address; I will, therefore, suppose it conclusive with the Commons—a legal reason must be assigned for their rejection.—Pray, my Lords, who is to assign that legal reason? Is it the minority who voted for the rejected candidate? I should suppose not; it must be then the majority who voted for the rejection.—Pray, my Lords, who are they? By what means shall they be discovered?

But I will suppose that every member of the Commons is willing to adopt the rejection, and to assign a cause for it. One man, suppose a friend of the rejected candidate, alleges a cause of a rejection in which he did not in reality concur,

and which cause he takes care shall be invalid and absurd; as, for instance, the plumpness of the person of Mr. James: if he did not vote for the rejection, he can have no right to assign a cause for it; the question then is, did he vote for the rejection? I beg leave, my Lords, to know how this is to be tried?

But suppose, to get rid of a difficulty, otherwise insurmountable, it shall be agreed, in direct contradiction to common sense and justice, that every member of the Commons shall be authorized to assign a legal cause of rejection (and in truth, if he may assign one, he may assign more than one, if he is disposed to do so); suppose then, my Lords, that one hundred and forty-six causes are assigned, for such may be the number, though no one member assigns more than a single cause; if they may be all assigned, they must be all disposed of according to law; but which shall be first put into a course of trial? How shall the right of precedence be decided? But I will suppose that also settled, and a single cause is assigned; that cause must be a legal disability of some of the kinds which I have already mentioned; for there cannot be any other. The cause then assigned, in order to prevail, must be true in fact, and valid in law, and amount to a legal incapacity. And here, let me observe, that a legal cause of incapacity, as it can be founded only on the commission of an infamous crime, or of some fact contrary to the duty and oath of a corporator, must, if allowed, imprint an indelible stigma on the reputation of the man so rejected. I ask, then, is the accusation of malignity, or credulity, or folly, to be taken for true? or shall the person have an opportunity of defending himself against the charge? The cause for which he can be rejected is the same with the cause for which he can be disfranchised; they are equally causes working an incapacity to hold a corporate franchise; their consequences are the same to the person accused—loss of franchise, and loss of reputation. The person accused, therefore, if by the construction of a statute he is exposed to accusation, must, by the same construction, be entitled to every advantage in point of defence, to which a person so accused is entitled by the general law of the land. What, then, are those advantages to which a corporator is entitled, when charged with any fact as a foundation of incapacity or disfranchisement? He must have due and timely notice of the charge, that he may prepare for his defence; every corporator must have timely and express notice of the specific charge against him, that

nothing may be done by surprise on either side. Now, my Lords, you will condescend to observe, that the time supposed by this statute for the whole business of election is a single day; is it then possible to give every Member of the Board of Aldermen—for each of them may be a candidate—due notice of every charge of legal disability, that may be possibly made against them? Or, if it be not, as it manifestly is not, will you, my Lords, create a construction which exposes any subject of the land to trial without notice; and to conviction and forfeiture without that opportunity of defence, to which he is entitled of natural justice and common right?

But I will suppose that your Lordships may adopt this construction, however it may supersede the right of the subject and the law of the land; I will suppose that the candidate may be accused at a moment's warning—is bare accusation to hold the place of conviction? Shall the Alderman, whose name is sent down, and who is rejected for an alleged personal disability, have an opportunity of defending himself against the charge of the Commons? He cannot have the privilege of the meanest felon, of standing before his accuser; for, as an Alderman, he must remain with his brethren, “separate and apart by themselves.” He cannot then plead for himself in person, nor by the law can he depute an attorney to defend in his name; for the Commons are not authorized to admit any strangers amongst them. It is therefore utterly out of his power to deny the charge against him, however false in fact it may happen to be.

But I will suppose, if you please, that the charge is denied, and issue joined upon the fact; I beg leave to ask, if this supposed construction provides any mode of calling the Jury, or summoning the Witnesses, on whose testimony, and on whose verdict, a citizen is to be tried upon a charge of corporate or legal culpability? But let me, my Lords, with the profoundest respect, press this wicked and silly nonsense a little farther:—suppose the charge admitted in fact, but the validity of it denied; who, my Lords, is to judge of it by virtue of this construction? A point of law is to be decided between the Lord Mayor and Aldermen who have chosen, and the Commons who have rejected. What is the consequence? If the Lord Mayor and Aldermen decide, they judge in their own cause; if the Commons decide, they judge in their own cause, contrary to the maxim—“*Nemo iudex in propria causâ* ;” can you then, my Lords, think yourselves warranted in adopting a construction, which supposes a legal

charge to be made, in which the accused has not the advantage of notice, or the means of defence, or of legal trial, and on which if any judgment be pronounced, it must be pronounced by the parties in the cause, in direct opposition to the law of the land?

But, my Lords, it seems all these defects in point of accusation, of defence, of trial, and of judgment, as the ingenious gentlemen have argued, are cured by the magical virtue of those beans, by whose agency the whole business must be conducted.

If the law had permitted a single word to be exchanged between the parties, the learned Counsel confess that much difficulty might arise in the events which I have stated; but they have found out that all these difficulties are prevented or removed by the beans and the ballot. According to these gentlemen, we are to suppose one of those unshaven demagogues, whom the learned Counsel have so humourously described, rising in the Commons when the name of Alderman James is sent down; he begins by throwing out a torrent of seditious invective against the servile profligacy and liquorish venality of the Board of Aldermen—this he does by beans:—having thus previously inflamed the passions of his fellows, and somewhat exhausted his own, his judgment collects the reins that floated on the neck of his imagination, and he becomes grave, compressed, sententious, and didactic; he lays down the law of personal disability, and corporate criminality, and corporate forfeiture, with great precision, with sound emphasis and good discretion, to the great delight and edification of the assembly—and this he does by beans.—He then proceeds, my Lords, to state the specific charge against the unfortunate candidate for approbation, with all the artifice and malignity of accusation, scalding the culprit in tears of affected pity, bringing forward the blackness of imputed guilt through the varnish of stimulated commiseration; bewailing the horror of his crime, that he may leave it without excuse; and invoking the sympathy of his Judges, that he may steel them against compassion—and this, my Lords, the unshaved demagogue doth by beans.—The accused doth not appear in person, for he cannot leave his companions; nor by attorney, for his attorney could not be admitted—but he appears and defends by beans. At first, humble and deprecatory, he conciliates the attention of his Judges to his defence, by giving them to hope that it may be without effect; he does not alarm them by any indiscreet assertion that the charge is false, but he slides upon them

arguments to show it improbable ; by degrees, however, he gains upon the assembly, and denies and refutes, and re-criminates and retorts—all by beans,—until at last he challenges his accuser to a trial, which is accordingly had, in the course of which the depositions are taken, the facts tried, the legal doubts proposed and explained—by beans ;—and in the same manner the law is settled with an exactness and authority that remains a record of jurisprudence, for the information of future ages ; while at the same time the “ harmony ” of the metropolis, is attuned by the marvellous temperament of jarring discord ; and the “ good will ” of the citizens is secured by the indissoluble bond of mutual crimination, and reciprocal abhorrence.

By this happy mode of decision, one hundred and forty-six causes of rejection (for of so many do the Commons consist, each of whom must be entitled to allege a distinct cause), are tried in the course of a single day, with satisfaction to all parties.

With what surprise and delight must the heart of the fortunate inventor have glowed, when he discovered those wonderful instruments of wisdom and of eloquence, which, without being obliged to commit the precious extracts of science or persuasion, to the faithless and fragile vehicles of words or phrases, can serve every process of composition or abstraction of ideas, and every exigency of discourse or argumentation, by the resistless strength and infinite variety of beans—white or black, or boiled or raw ; displaying all the magic of their powers in the mysterious exertion of dumb investigation, and mute discussion—of speechless objection, and tongue-tied refutation !

Nor should it be forgotten, my Lords, that this noble discovery does no little honour to the sagacity of the present age, by explaining a doubt that has for so many centuries perplexed the labour of philosophic inquiry, and furnished the true reason why the pupils of Pythagoras were prohibited the use of beans :—it cannot, I think, my Lords, be doubted that the great author of the metempsychosis found out that those mystic powers of persuasion, which vulgar naturalists supposed to remain lodged in minerals, or fossils, had really transmigrated into beans ; and he could not, therefore, but see that it would have been fruitless to preclude his disciples from mere oral babbling, unless he had also debarred them from the indulgence of vegetable loquacity.

My Lords, I have hitherto endeavoured to show, and I hope not without success, that this act of Parliament gives

to the Commons a peremptory right of rejection ; that the other construction gives no remedy whatsoever for the mischief which occasioned its being passed ; and cannot by any possible course of proceeding be carried into effect. I will take the liberty now of giving an answer to some objections relied upon by the Counsel for Mr. James, and I will do it with a conciseness, not I trust disproportioned to their importance.

They say, that a peremptory rejection in the Commons takes away all power whatsoever from the Board of Aldermen : to that I answer, that the fact and the principle is equally against them :—the fact, because that Board is the only body from which a Lord Mayor can be chosen, and has therefore the very great power that results from exclusive eligibility ; the principle, because if the argument be that the Lord Mayor and Aldermen ought to have some power in such election, by a parity of reason, so ought the Commons, who, if they can reject only for a legal incapacity, will be ousted of all authority whatsoever in such election, and be reduced to a state of disfranchisement by such a construction.

The gentlemen say, that your Lordships can only inquire into the *primâ facie* title, and that the claim of Mr. James is, *primâ facie*, the better claim.

I admit, my Lords, that you are not competent to pronounce any judgment that can bind the right. But give me leave to observe, first, that the question, upon which you yourselves have put this inquiry, is a question applicable only to the very right, and by no possibility applicable to a *primâ facie* title.

One of your Lordships has declared the question to be, “ Whether by the common law, a mere power of approbation “ or rejection can supersede a power of election ? ” If that question is warranted in assuming the fact, give me leave to say, that the answer to it goes directly to the right, and to nothing else : for if the Commons are bound by law to assign a cause of rejection, and have not done so, Mr. James had clearly the legal right of election, and Mr. Howison has no right or title whatsoever.

But I say further :—the mode of your inquiry makes it ridiculous to argue, that you have not entered into any disquisition of the right. Why, my Lords, examine Witnesses on both sides ? Why examine the books of the Corporation ? Why examine into every fact relating to the election ?

I cannot suppose, my Lords, that you inquired into facts, upon which you thought yourselves incompetent to form any

decision:—I cannot suppose you to admit an extra-judicial inquiry, by which the members of a corporation may be drawn into admission, that may expose them to the future danger of prosecution or disfranchisement.

I hope, my Lords, I shall not be deemed so presumptuous, as to take upon me to say why you have gone into these examinations; it is not my province to justify your Lordships' proceedings—it stands upon your own authority; I am only answering an argument, and I answer it by showing it inconsistent with that proceeding.

Let me, my Lords, pursue the idea a little further. Are you only inquiring into a *primâ facie* title? What is a *primâ facie* title? I conceive it to be a title, not which may possibly be found a good one upon future examination; but, which is good and valid, and must prevail, unless it be opposed and defeated by another, which may possibly be adduced, but which does not then appear. So in an ejectment at law, for instance, a Plaintiff must make a title, or he is non-suited. If he makes out a legal title *in omnibus*, the Court declares it a *primâ facie* title, that is, a title conclusive as to the right, unless a better shall be shown; and accordingly calls on the Defendant to show such better title, if he can: the moment the Defendant produces his title, the question of *primâ facie* title is completely at an end; and the Court has no longer any question to decide upon, but the very merits; and this for a plain reason:—the question, whether *primâ facie* a good title or not, is decided upon the single ground that no other title then appears with which the title shown can be compared; in short, my Lords, whether *primâ facie* good, is a question confined only to the case of a single title, and cannot be applied, without the grossest absurdity, to a case where you have both the titles actually before you. It may be the question in case of a single return; in case of a double return, as here, it cannot by any possibility be the question.

But, my Lords, let me carry this a little farther yet. You have both the titles before you.—You have yourselves declared, that the question turns upon the construction of this act of Parliament, which enacts also, “That it shall be deemed a public act, in all Courts, and in all places.”

Now it is contended, the construction of the act is *primâ facie* in favour of Mr. James.

May I presume to ask, what does the *primâ facie* construction of a statute import? It must import, if it import any thing, that meaning which, for aught then appearing, is

true, but may possibly, because of something not then appearing, turn out not to be so. Now, nothing can possibly be opposed to that *primâ facie* construction, save the act itself. A *primâ facie* construction of a statute, therefore, can be nothing but the opinion that rises in the mind of a man, upon a single reading of it, who does not choose to be at the trouble of reading it again. In truth, my Lords, I should not have thought it necessary to descend to this kind of argumentation, if it had not become requisite for me to do so, by an observation coming from one of your Lordships:—“That the letter of the act would bear out the Commons in their claim, but that the sound construction might be a very different thing.” I will, therefore, add but another word upon this subject:—if a *primâ facie* construction be sufficient to decide, and if the Commons have the letter of the law in their favour, I would ask, with the profoundest humility, whether your Lordships will give the sanction of your high authority to a notion, that, in statutes made to secure the liberties of the people, the express words in which they are written shall not be at least a *primâ facie* evidence of their signification?

My Lords, the learned Counsel have been pleased to make a charge against the citizens of Dublin, “for their tests and their cavalcadings” on a late occasion; and they have examined witnesses in support of their accusation. It is true, my Lords, the citizens did engage to the public and to one another, that they would not vote for any candidate for corporate office or popular representation, who had any place in the police establishment. But I would be glad to know by what law it is criminal in freemen to pledge themselves to that conduct which they think indispensably necessary to the freedom of their country? The city of Dublin is bound to submit to whatever mode of defence shall be devised for her by law, while such law shall continue unrepealed; but I would be glad to learn, by what law they are bound not to abhor the police institution, expensive and ineffectual, inadequate to their protection, and dangerous to their liberty? and that they do think it so cannot be doubted. Session after session has the floor of the Senate been covered with their petitions, praying to be relieved against it, as an oppressive, a corrupt, and therefore an execrable establishment.

True it is, also, my Lords, they have been guilty of those triumphant processions which the learned Counsel have so

* Lord Clare.

heavily condemned. The virtue of the people stood forward to oppose an attempt to seize upon their representation by the exercise of a dangerous and unconstitutional influence, and it succeeded in the conflict; it routed and put to flight that corruption, which sat, like an incubus, on the heart of the metropolis, chaining the current of its blood, and locking up every healthful function and energy of life. The learned Counsel might have seen the city pouring out her inhabitants, as if to share the general joy of escaping from some great calamity, in mutual gratulation and public triumph.*—But why does the learned Counsel insist upon this subject before your Lordships? Does he think such meetings illegal? He knows his profession too well, not to know the reverse.—But does he think it competent to the Lord-Lieutenant and Council of Ireland to take cognizance of such facts, or to pronounce any opinion whatever concerning the privileges of the people? He must know it is not.—Does he then mean, that such things may be subjects of your resentment, though not of your jurisdiction? It would have been worth while, before that point had been pressed, to consider between what parties it must suppose the present contest to subsist. To call upon the government of the country to let their vengeance fall upon the people, for their resistance of unconstitutional influence, is surely an appeal not very consistent with the virtuous impartiality of this august assembly. It is only for those who feel defeat, to cherish resentment, or to think of vengeance.

But suppose for a moment (and there never ought to be reason to suppose it), that the opposition of the city had been directly to the views or the wishes of the government; why are you therefore called upon to seize its corporate rights into your hands, or to force an illegal Magistrate upon it? Is it insinuated that it can be just to punish a want of complaisance, by an act of lawless outrage and arbitrary power? Does the British Constitution, my Lords, know of such offences; or does it warrant this species of tyrannical reprisal? And, my Lords, if the injustice of it is without defence, what argument can be offered in support of its prudence or policy? It was once the calamity of England to have such an experiment made by the last of the Stuarts—and the last of that unhappy race because of such experiments. The several corporations of that country were stript of their charters: and what was the consequence? I

* The return of Mr. Grattan and Lord H. Fitzgerald, as Members for the city of Dublin, in opposition to the Court candidates, is here alluded to.

need not state them; they are notorious: yet, my Lords, there was a time when that sovereign was willing to relinquish what he had so weakly and wickedly undertaken; but there is a time when concession comes too late to restore either public quiet or public confidence, and when it amounts to nothing more than an acknowledgment of injustice; when the people must see, that it is only the screen behind which oppression changes her attack from force to fraud, from the battery to the mine. See, then, my Lords, how such a measure comes recommended; its principle injustice—its motive vengeance—its adoption sanctioned by the authority of a tyrant, or the example of a revolution.

My Lords, the learned Counsel has made another observation which I cannot pass without remark; it is the last with which I shall trouble you. He says, the Commons may apply to the law, and bring an information, in *quo warranto*, against Mr. James, though you should give him your approbation; that is, my Lords, your judgment does not bind the right, it only decides the possession of the office. To this I answer, that in this case, to decide on the possession is in fact to decide the contest; and I found that answer on the high authority of the noble Lord * who was pleased to say, that “when the city had spent three years in the “King’s Bench, she would probably grow sick of the con-“test.” I was not surprised, my Lords, to hear an expression of that regret which must arise in every worthy mind, and which I am sure the noble Lord sincerely felt, at the distress of a people, reduced to defend those rights which ought never to have been attacked, and to defend them in a way by which they could not possibly succeed. The truth is, as the noble Lord has stated, the time of Mr. James’s mayoralty would expire in a year, and the question of law could not be terminated in three; the present contest, therefore, cannot be decided by law. How, then, my Lords, is it to be decided? Are the people to submit tamely to oppression, or are they to struggle for their liberties? I trust, my Lords, you will think they have not done any thing so culpable as can justify the driving them to so calamitous a necessity; for fatal must that struggle be, in whatsoever country it shall happen, in which the liberties of a people can find no safety but in the efforts of vindictive virtue, fatal to all parties, whatsoever may be the event. But, my Lords, I feel this to be a topic on which it is neither my province nor my wish to expatiate, and I leave it the more

* The Lord Chancellor.

willingly, because I know that I have already trespassed very long upon your patience, and also, because I cannot relinquish an hope, that the decision of your Lordships this day will be such as shall restore the tranquillity of the public mind, the mutual confidence between the government and the people, and make it unnecessary for any man to pursue so painful a subject.

[The election of the Commons, in the person of Alderman Howison, for Lord Mayor, was confirmed by the Lord-Lieutenant and Privy Council.]

SPEECH,

IN THE HOUSE OF COMMONS IN IRELAND, DEC. 16, 1783,

ON MOVING THAT IT IS

THE EXCLUSIVE PRIVILEGE OF THE HOUSE TO ORIGINATE

MONEY BILLS.

WHILE I reflect that the motion I am now going to make, is of the utmost importance to the honour, and even existence of this House, and that I have given full notice of my intention, I am much surprised at the little regard that seems intended to be paid to it, as is manifest from the emptiness of those benches. This, sir, is not a question of party; I never did, nor ever will attach myself to party; and though I mean to move the resolution from this side of the House, yet it concerns both sides equally; it goes to assert the privileges of the people of Ireland represented in this House of Commons; and I say every party, and every description of men in this House, are equally concerned in supporting it. I say it is the sole and exclusive right of the Commons of Ireland to originate and frame Money Bills in such manner as they shall think proper; and the resolution I intend to propose is only to vindicate this privilege from the encroachments of a neighbouring assembly, which has lately, by certain resolutions, invaded this right, this palla-

dium of the constitution, which I trust every man in the House will think himself bound to defend.

I am sorry to say that the constitution of Ireland is so young, that I need not go back to a very remote period, to prove that the exclusive right of originating and framing Money Bills has always resided in this House; but for thirty years back it certainly has; and in England, from whence we derive our constitution, it always has been the practice. The Peers and the Crown possess an undoubted right of rejecting such bills, *in toto*; but in the Commons alone resides the power of originating or framing them; the very mode of giving the royal assent to such bills demonstrates that the Commons alone are the source from which they flow. His Majesty thanks his faithful Commons, accepts their benevolence, and wills it to be so; and this mode obtains both in Britain and here. To whom should the people of Ireland look for the redress of grievances, for the encouragement of arts, for the promotion of commerce, but to their representatives in this House? What powerful engine has this House, by which it can obtain the redress of grievances, the encouragement of arts, or the promotion of commerce, but by including those objects in the bill of supply? And if the right be once given up, or wrested from the Commons, they cease to be the patrons and representatives of the people; another assembly will assume that power; the people will learn to look for that encouragement and support from the aristocratic, which they now receive from the democratic branch of the state; this House will become a very cipher, and its members, instead of possessing the power of encouraging arts, rewarding merit, or, in a word, of serving the country, will become the humble solicitors of another assembly.

From the reign of Henry the Third, the power of annexing the redress of grievances to Money Bills, has been the constitutional privilege of the Commons of England; the practice of inserting such clauses as the Commons have deemed proper, has obtained in Ireland for more than thirty years; and, to any person acquainted with our constitution, must, at the slightest view, appear to be their inherent right: I cannot therefore suppose this House will be silent when this privilege is invaded by another assembly. No man entertains a higher opinion of that assembly than I do, and am persuaded, that so great is their Lordships' wisdom, that when this matter is duly considered by them, they will see the impropriety of two resolutions

which appear upon their journals of the fourth and fifth of the present month, to this effect:—"That all grants made to private manufacturers ought to be made in separate acts; and that enacting clauses in bills of supply, the matter of which is foreign to the bill, is unparliamentary, and tends to destroy the constitution of this kingdom." That the illustrious assembly to which I allude have passed such a resolution is notorious, and cannot be denied; it is inserted in their journals, and has been seen by many members of this House: the formality therefore of appointing a committee to inspect their Lordships' journals, is unnecessary; and all that remains for the Commons, is to vindicate their own privileges by a mild and temperate resolution, which I shall propose to the House: for even admitting that some times a House of Commons has erred in making improper grants, we should rather reform ourselves, and determine not to err again, than submit to have a monitor over us.

If I were addressing a House of Commons the most virtuous, or the most corrupt, I should expect to be supported in this measure; for I would say to a virtuous House of Commons, the privilege of originating and framing Money Bills, is the palladium of your liberty, the great engine to restrain oppression, to redress grievances, or to encourage merit. I would say to a corrupt House of Commons, it is the palladium of your corruption, the security of the wages of your venality, the means by which you may obtain the reward of your prostitution; or if I were addressing a House containing both descriptions, both kinds of argument would be applicable. But to the House before which I stand, surely the arguments which I have first used, the arguments of virtue and honour, will be sufficient; to them, therefore, I shall trust.

I lament that a learned and Right Honourable Member, with whom I once had the happiness of living on terms of friendship, is now absent; because I think I might rely upon his supporting the resolution I intend to propose; that support would perhaps renew the intercourse of our friendship, which has lately been interrupted. And I must beg the indulgence of the House to say, that the friendship was on the footing of perfect equality, not imposed by obligation on the one side, or bound by gratitude on the other; for I thank God, when that friendship commenced, I was above receiving obligation from any man; and therefore our friendship, as it was more pure and disinterested, as it de-

pended on a sympathy of minds, and a congeniality of sentiments, I trusted would have endured the longer. I think myself bound to make this public declaration, as it has gone forth from this House, that I am a man of ingratitude; and to declare, that for any difference of opinion with my learned and Right Honourable Friend, I cannot be taxed with ingratitude; for that I never received any obligation from him, but lived on a footing of perfect equality, save only so far as his great talents and erudition outwent mine.

I confess my obligation to the House, for this indulgence of speaking a few words foreign to the debate, but which every man must think I owed to my own character; and that I may detain gentlemen no longer, I shall briefly move:—

“That it is the sole and undoubted privilege of the Commons of Ireland, to originate all bills of supply and grants of public money, in such manner, and with such clauses, as they shall think proper.”

SPEECH,

IN THE IRISH HOUSE OF COMMONS, FEBRUARY 24, 1785,

ON

ATTACHMENTS.

Mr. CURRAN said he hoped he might say a few words on this great subject, without disturbing the sleep of any Right Honourable Member [the Attorney-General had fallen asleep on his seat]: and yet, perhaps, added he, I ought rather to envy than blame the tranquillity of the Right Honourable Gentleman. I do not feel myself so happily tempered, as to be lulled to repose by the storms that shake the land. If they invite rest to any, that rest ought not to be lavished on the guilty spirit. He said, he never more strongly felt the necessity of a perfect union with Britain, of standing or falling with her in fortune and constitution, than on this occasion. She was the parent, the archetype of Irish liberty, which she had preserved inviolate in its grand points, while among us it has been violated and debased. He then called upon the House to consider the trust reposed in them, as the

great inquest of the people. He respected Judges highly—they ought to be respected, and feel their dignity and freedom from reprehension—while they did what Judges ought to do; but their stations should not screen them, when they passed the limit of their duty.

Whether they did, or not, was the question? The House was the judge of those Judges; and it would betray the people to tyranny, and abdicate their representation, if they did not act with probity and firmness.

In their proceedings against Reilly, he thought they had transgressed the law, and made a precedent which, while it remained, was subversive of the trial by Jury, and, of course, of liberty. He regarded the constitution, he regarded the Judges—three of that Court, at least; and for their sakes, he would endeavour to undo what they had done.

The question was, whether that Court had really punished their own officer for a real contempt; or whether it had abused that power, for the illegal end of punishing a supposed offence against the state, by a summary proceeding, without a trial by Jury?

He said the question was plain, whether as a point of constitution, or as of law; as the former it is plain and obvious; but he would first consider it in the former view. When he felt the constitution rocking over his head, his first anxiety was to explore the foundation, to see if the great arches that supported the fabric had fallen in; but he found them firm, on the solid and massy principle of common law. He then observed, that the principle of legal liberty was, that offence, and trial, and punishment, should be fixed; it was sense—it was Magna Charta; a trial by Jury, as to fact—an appeal from Judges, as to law.

He admitted attachment an exception to the general rule, as founded in necessity, for the support of Courts, in administering justice, by a summary control over their officers acting under them.

But the necessity that gave rise to it was also the limit. If it was entered farther, it would extend to all criminal cases not capital; and in the room of a Jury, crimes would be created by a Judge,—the party accused by him, found guilty by him, punished by the utter loss of his liberty and property for life, by indefinite fine and imprisonment, without remedy or appeal. If he did not answer, he was guilty; even if he did, the Court might think, or say it thought, the answer evasive, and so convict him for imputed prevarication.

The power of attachment, he said, was wisely confined by the British laws, and practised within that limit. The Crown lawyers had not produced a single case where the King's Bench in England had gone beyond it. They had ranged through the annals of history; through every reign of folly and of blood; through the proud domination of the Tudors, and the blockhead despotism of the Stuarts, without finding a single case to support their doctrine. He considered the office of Sheriff as judicial and ministerial. He said Reilly's offence did not fall within any summary control, in either capacity. It was not a judicial act; it was not *colore officii*. An act *colore officii* must either be an act done by the actual exercise of an abused or an usurped authority; neither of which could it be called: for where the Sheriff summonses his county, he does it by command, by authority, under pain of fine and imprisonment to those who disobey.

Was the appointment of a meeting any such active exertion of authority? Did any man suppose he was obliged to attend?—that he would be fined, if he refused to attend? No.—Did the Sheriff hold out any such colourable authority? Clearly not. The contrary:—he explained the purpose of the intended meeting; he stated at whose instance he appointed such meeting; and thereby showed to every man in his senses, that he was not affecting to convene them by colour of any compulsive authority.

If then there was any guilt in the Sheriff's conduct, it was not punishable by attachment. They who argued from its enormity, were guilty of a shabby attempt to mislead men from the question, which was not, whether he ought to be punished at all? but whether he had been punished according to law?

You have heard no man adduce a single case to support their assertion; but we have the uniform practice of the King's Bench in England in our favour—the uniform practice, both there and here, during these last years. Had they not meetings there and here? Was not the Crown receiving petitions and addresses from such assemblies?—Why, during that time, no motion for an attachment in either kingdom?

If an English Attorney-General had attempted such a daring outrage on public liberty and law, he must have found some friend to warn him not to debase the Court, and make it appear to all mankind as the odious engine of arbitrary power; not to put it into so unnatural a situation, as that of standing between the people and the Crown, or between the people and their representatives.

He would warn him not to bring public hatred on the government, by the adoption of illegal prosecution; that if he showed himself afraid of proceeding against offenders by the ordinary mode, then offenders would be exalted by arbitrary persecution of them; they would become suffering patriots, from being mere petty offenders; their cries would become popular. He would be warned how he led the Court into an illegality, which the Commons could never endure; that no honest representative could sacrifice his fame and his duty, by voting in support of a proceeding subversive of liberty; that he would shrink from the reproach of the most insignificant of his constituents, if that constituent could say to him, "when thou sawest the thief of the constitution, thou consentedst unto him."

Such would be the motion suggested to an English Attorney-General; and accordingly we find no instance of his ever venturing on such a measure.

Without case, then, or precedent, or principle, what is the support of such a conduct here?—the distinction of a Judge? And what is that distinction? It is different in different men; it is different in the same man at different times—it is the folly of a fool, and the fear of a coward—it is the infamy of the young, and the dotage of age; in the best man, it is very weakness that human nature is subject to; and in the worst, it is very vice. Will you then tell the people that you have chosen this glorious distinction in the place of fixed laws, offences, and fixed punishment, and in the place of that great barrier between the prerogative and the people—a trial by Jury?

But it is objected that the resolution is a censure on the Judges, and a charge of corruption:—I deny it, and I appeal to your own acts.

Mr. Curran then called to the Clerk, who read from the journals a vote of censure passed upon Mr. Justice Robinson, for imposing a fine illegally in a county, when on circuit, without view or evidence.

Was their resolution (continued Mr. Curran) founded on any corruption of that Judge? No; you would, if so, have addressed to remove him. I called for the resolution, therefore, not to charge him with guilt—I am persuaded he acted merely through error; but to vindicate him, to vindicate you, and to exhort you to be consistent. You thought a much smaller violation of law was deserving your reprobation.—Do not abandon yourselves and your country to slavery, by suffering so much a grosser and more dangerous

transgression of the constitution to become a precedent for ever. In tenderness even to the Judges, interpose. Their regret, which I am sure they now feel on reflection, cannot undo what they have done; their hands cannot wash away what is written in their records; but you may repair whatever has been injured:—if your friend had unwillingly plunged a dagger into the breast of a stranger, would you prove his innocence by letting the victim bleed to death? The constitution has been wounded deeply, but I am persuaded innocently; it is you only, who, by neglecting to interpose, can make the consequences fatal, and the wound ripen into murder.

I would wish, I own, that the liberty of Ireland should be supported by her own children; but if she is scorned and rejected by them, when her all is at stake, I will implore the assistance even of two strangers; I will call on the Right Honourable Secretary to support the principles of the British constitution. Let him not render his administration odious to the people of Ireland, by applying his influence in this House, to the ruin of their personal freedom. Let him not give a pretence to the enemies of his friend in a sister country, to say that the son of the illustrious Chatham is disgracing the memory of his great father; that the trophies of his Irish administration are the introduction of an inquisition among us, and the extinction of a trial by Jury; let them not say that the pulse of the constitution beats only in the heart of the empire, but that it is dead in the extremities.

Mr. Curran concluded with declaring his hearty concurrence in the resolution proposed.

[The Attorney-General (Fitzgibbon), in a speech of much personality, opposed Mr. Curran's motion.]

Mr. Curran, in reply, thanked the Right Honourable Gentleman for restoring him to his good humour, and for having, with great liberality and parliamentary decency, answered his arguments with personality! Some expressions could not heat him, when coming from persons of a certain distinction. He would not interrupt the Right Honourable Gentleman in the fifth repetition of his speech. He would prevent his arguments by telling him he had not in one instance alluded to Mr. Reilly. The Right Honourable Gentleman said he had declared the Judges guilty; but he had said no such thing. He said, if any Judge was to act in the manner he mentioned, it would be an aggravation of his guilt. The Right Honourable Gentleman had said, that the House of

Commons had no right to investigate the conduct of Judges; if so, he would ask the learned Sergeant, why he sat in that chair? he would ask why the resolution had been just read from the journals?—The gentleman had called him a babbler; he could not think that was meant as a disgrace, because, in another Parliament, before he had the honour of a seat in that House, but when he was in the gallery, he had heard a young lawyer named Babblers. He did not recollect that there were sponsors at the baptismal font; nor was there any occasion, as the infant had promised and vowed so many things in his own name. Indeed he found it difficult to reply, for he was not accustomed to pronounce panegyric upon himself; he did not well know how to do it; but since he could not tell them what he was, he could tell them what he was not:—he was not a man whose respect in person and character depended upon the importance of his office; he was not a young man who thrust himself into the foreground of a picture which ought to be occupied by a better figure; he was not a man who replied with invective when sinking under the weight of argument; he was not a man who denied the necessity of a parliamentary reform at the time he proved the expediency of it, by reviling his own constituents, the parish clerk, the sexton, and grave-digger; and if there was any man who could apply what he was not to himself, he left him to think of it in the committee, and to contemplate upon it when he went home.

SPEECH,

IN THE IRISH HOUSE OF COMMONS, JULY 23, 1785,

ON THE

COMMERCIAL RESOLUTIONS.

I CAN easily excuse some inconsistencies in the conduct of the Right Honourable Secretary, for some accidents have befallen him. When we met last, he desired us to adjourn for three weeks; we did so; and now wants above a fortnight more. But will that help forward the business before the House? will it expedite the progress of a bill, to say,

let us wait till the packet comes in from England, and perhaps we shall have some news about the propositions. Did the British Minister act in this manner? No: when he postponed, from time to time, the consideration of the propositions, he did not postpone the other business of the House: he did not say, let it wait till the packet comes from Dublin. This the Irish Minister is forced to do: I say forced, for I am sure it is not his inclination; it must distress him greatly; and I sincerely feel for and pity his distress.

When we had the eleven propositions before us, we were charmed with them. Why?—because we did not understand them. Yes, the endearing word reciprocity rang at every corner of the streets. We then thought that the Right Honourable Gentleman laid the propositions before us by authority; but the English Minister reprobates them as soon as they get to England, and the whole nation reprobates them: thus, on one hand we must conclude the English Minister tells the Irish Minister, to propose an adjustment, and when it goes back alters every part; or, that the Irish Minister proposed it without any authority at all. I am inclined to believe the latter; for it would add to the gentleman's distress to suppose the former.

Now let us mark another inconsistency into which the Right Honourable Gentleman is driven, no doubt against his will. Time to deliberate was refused us, when we had something to deliberate upon; and now, when we are told we have nothing before us to consider, we are to have a fortnight's recess, to enable us to think about nothing. And time, indeed, it will take, before we can think to any purpose. It will take time for the propositions to go through, and perhaps to be again altered in the House of Lords. It will take time for them to be reconsidered in the British Commons. It will take time for them to come over here. It will take time for us to consider them, though that time is likely to be very short. It will take time to send them back to England. It will take time for them to be returned to us again; and then time will be required to carry them into execution.

But a rumour hath gone abroad, of a studied design to delay the discussion of this business until there shall be no Members in town. Away with such a suspicion; I think too honourably of the Right Honourable Gentleman; but yet I should be glad to hear him say, there is not even an idea of the base design of forcing them down our throats.

Mr. Secretary Orde having moved that the House do adjourn to Tuesday se'nnight, Mr. Curran rose and spoke to the following effect:—

Sir, the adjournment proposed is disgraceful to Parliament, and disgraceful to the nation. I must explain myself, by stating a few facts, though they relate to a subject that I own I cannot approach but with reluctance. The Right Honourable Gentleman, early in the session, produced a set of propositions, which he was authorized to present to us as a system of final and permanent commercial adjustment between the two kingdoms. As a compensation for the expected advantages of this system, we were called upon to impose £140,000. a year on this exhausted country. Unequal to our strength, and enormous as the burden was, we submitted; we were willing to strain every nerve in the common cause, and to stand or fall with the fate of the British empire. But what is the event? I feel how much beneath us it would be to attend to the unauthenticated rumours of what may be said or done in another kingdom; but it would be a ridiculous affectation in us not to know that the Right Honourable Gentleman's system has been reprobated by those under whose authority he was supposed to act, and that he himself has been deserted and disavowed. I cannot, for my own part, but pity the calamity of a man who is exposed to the contempt of the countries as an egregious dupe, or to their indignation as a gross impostor; for even he himself now abandons every hope of those propositions returning to this House in the form they left it. On the contrary, he now only hopes that he may be able to bring something forward that may deserve our approbation on some future day. He requests an adjournment for ten days, and he promises that he will give a week's notice, when the yet undiscovered something is to be proposed, which something he promises shall be agreeable to this nation, and authorized by the English minister. On what his confidence of this is founded, I know not; unless he argues, that because he has been disavowed and exposed in his past conduct by his employers, he may rely on their supporting him in future. But however the Right Honourable Gentleman may fail in drawing instruction from experience or calamity, we ought to be more wise; we should learn caution from disappointment. We relied on the Right Honourable Gentleman's assurances—we found them fallacious; we have oppressed the people with a load of taxes, as a compensation for a commercial adjustment—we have not got that adjustment; we confided

in our skill in negotiating, and we are rendered ridiculous by that confidence. We looked abroad for the resources of Irish commerce, and we find that they are to be sought for only at home, in the industry of the people, in the honesty of Parliament, and in our learning that negotiation must inevitably bring derision on ourselves, and ruin on our constituents. But you are called on to depend on the Right Honourable Gentleman's regard for his own reputation: when the interest of the people is at stake, can we be honest in reposing on so despicable a security? Suppose this great pledge of the Right Honourable Gentleman's character should chance to become forfeited, where will you look for it? When he sails for England, is it too large to carry with him? Or, if you would discover in what parish of Great Britain it may be found, will the sacrifice be an atonement to the people who have already been betrayed by trusting to so contemptible a pledge? See then what we do by consenting to this short adjournment: we have been abased already, and we neglect every other duty, in order to solicit a repetition of that abuse. If this something should arrive at all, it will be proposed when the business of the country will engage every county Member at the assizes: for as to his week's notice, it either cannot reach him in time, or if it should, he cannot possibly obey it. Is it then our wish to have a new subject, of such moment as a contract that is to bind us for ever, concluded in half a House, and without a single representative for a county in the number? Is it wise to trust to half the House, in a negotiation in which the wisdom of the whole has been already defeated? But what is the necessity that induces us to acquiesce in a measure of so much danger and disgrace? Is this nation brought to so abject a condition by her representatives, as to have no refuge from ruin, but in the immediate assistance of Great Britain? Sir, I do not so far despair of the public weal: oppressed as we were, we found a resource for our constitution in the spirit of the people; abused as we now find ourselves, our commerce cannot fail of a resource in our virtue and industry, if we do not suffer ourselves to be diverted from those great and infallible resources, by a silly hope from negotiation, for which we are not adapted, and in which we can never succeed. And if this great hope still is left, why fill the public mind with alarm and dismay? Shall we teach the people to think, that something instantly must be done, to save them from destruction? Suppose that something should not, cannot

be done ; may not the attempt, instead of uniting the two countries, involve them in the consequence of discord and dissension ? But, if your compliance with the Right Honourable Gentleman's requisition does not sink the people into despair of their own situation, does it not expose the honour and integrity of this House to suspicion and distrust ? For what can they suppose we intend by this delay ? The Right Honourable Gentleman may find it worth his while to secure the continuance in his office by an expedient, however temporary and ineffectual ; but, sir, if we are supposed to concur in such a design, our character is gone with the people ; for, if we are honest, it can be of no moment to us whether this Secretary or that Minister shall continue in office or not. I know it has been rumoured that the Right Honourable Gentleman may take advantage of a thin House, to impose upon this country the new set of resolutions that have passed the Commons of Great Britain. Sir, I do not suspect any such thing, nor would I encourage such a groundless apprehension. Sir, I do not think it would be easy to find a man who would stand within the low-water mark of our shore, and read some of those resolutions above his breath, without feeling some uneasiness for his personal safety ; neither can I think, if a foreign usurpation should come crested to our bar, and demand from the treachery of this House a surrender of that constitution which has been established by the virtue of the nation, that we would answer such a requisition by words.

But, sir, though the people should not apprehend such extreme perfidy from us, they will be justly alarmed if they see us act with needless precipitation ; after what is past, we cannot be surprised at not meeting with the most favourable interpretations of our conduct.

On great subjects, the magnitude of the ideas to be compared, may cause some confusion in the minds of ordinary men ; they will therefore examine our conduct by analogy to the more frequent occurrences of common life : such cases happen every day. Will you permit me to suppose a very familiar one, by which our present situation may be illustrated to a common mind.

I will suppose, then, sir, that an old friend that you loved, just recovering from a disease, in which he had been wasted almost to death, should prevail upon you to take the trouble of buying him a horse for the establishment of his health ; and I the more freely presume to represent you for a moment in an office so little corresponding with the dignity of your

station, from a consciousness that my fancy cannot put you in any place, to which you will not be followed by my utmost respect. I will, therefore, suppose that you send for a horse-jockey, who does not come himself, but sends his foreman. Says the foreman—Sir, I know what you want; my master has a horse that will exactly match your friend; he is descended from Rabelais' famous Johannes Cabullus, that got a doctor of physic's degree from the college of Rheims; but your friend must pay his price. My master knows he has no money at present, and will therefore accept his note for the amount of what he shall be able to earn while he lives; allowing him, however, such moderate subsistence as may prevent him from perishing. If you are satisfied, I will step for the horse and bring him instantly, with the bridle and saddle, which you shall have in the bargain.—But friend, say you, are you sure that you are authorized to make this bargain?—What, sir, cries the foreman, would you doubt my honour? Sir, I can find three hundred gentlemen who never saw me before, and yet have gone bail for me at the first view of my face. Besides, sir, you have a greater pledge; my honour, sir, my renown is at stake.—Well, sir, you agree,—the note is passed; the foreman leaves you, and returns without the horse. What, sir! where is the horse?—Why, in truth, sir, answers he, I am sorry for this little disappointment, but my mistress has taken a fancy to the horse, so your friend cannot have him. But we have a nice little mare that will match him better; as to the saddle, he must do without that, for little master insists on keeping it: however, your friend has been so poor a fellow, that he must have too thick a skin to be much fretted by riding bare-backed; besides the mare is so low, that his feet will reach the ground when he rides her; and still further to accommodate him, my master insists on having a chain locked to her feet, of which lock my master is to have a key, to lock or unlock as he pleases; and your friend shall also have a key, so formed that he cannot unlock the chain, but with which he may double-lock it, if he thinks fit.—What, sirrah! do you think I'll betray my old friend to such a fraud?—Why really, sir, you are impertinent, and your friend is too peevish; it was only the other day that he charged my master with having stolen his cloak, and grew angry, and got a ferrule and spike to his staff. Why, sir, you see how good-humouredly my master gave back the cloak. Sir, my master scorns to break his word, and so do I; sir, my character is your security. Now, as to the mare, you are too hasty in

objecting to her, for I am not sure that you can get her: all I ask of you now is, to wait a few hours in the street, that I may try if something may not be done; but let me say one word to you in confidence—I am to get two guineas, if I can bring your friend to be satisfied with what we can do for him; now if you assist me in this, you shall have half the money; for to tell you the truth, if I fail in my undertaking, I shall either be discharged entirely, or degraded to my former place of helper in the stable.

Now, Mr. Speaker, as I do not presume to judge of your feelings by my own, I cannot be sure that you would beat the foreman, or abuse him as an impudent lying imposter:—I rather think you would for a moment be lost in reflecting, and not without a pang, how the rectitude of your heart, and the tenderness of your head, had exposed you to be the dupe of improbity and folly. But, sir, I know you would leave the wretch who had deceived you, or the fool who was deceived by his master, and you would return to your friend. And methinks you would say to him, we have been deceived in the course we have adopted; for, my good friend, you must look to the exertions of your own strength, for the establishment of your health. You have great stamina still remaining; rely upon them, and they will support you. Let no man persuade you to take the ferrule or spike from your staff. It will guard your cloak. Neither quarrel with the jockey, for he cannot recover the contents of the note, as you have not the horse; and he may yet see the policy of using you honestly, and deserving to be your friend. If so, embrace him, and let your staff be lifted in defence of your common safety; and in the meantime, let it be always in readiness to defend yourself.

Such, sir, is the advice you would offer to your friend, and which I would now offer to this House. There is no ground for despairing; let us not therefore alarm the people. If a closer connexion with Great Britain is not now practicable, it may become practicable hereafter. But we shall ruin every hope of that kind by precipitation. I do therefore conjure gentlemen not to run the risk of forcing us at a week's notice to enter on a subject, on which every man in the nation ought to be allowed the most unlimited time for deliberation. I do conjure them not to assent to a measure that can serve nobody but the proposer of it; that must expose the Members of this House to the distrust of their constituents, and which may in its consequences endanger the harmony of two kingdoms, whose interests and fortunes ought never to be separated.

SPEECH,

IN THE IRISH HOUSE OF COMMONS, AUG. 12, 1785,

ON THE BILL FOR REGULATING

COMMERCIAL INTERCOURSE

BETWEEN

GREAT BRITAIN AND IRELAND.

MR. ORDE having moved for leave to bring in the bill,—
 Mr. Curran said, he was too much exhausted to say much at that hour (six o'clock) on the subject. His zeal had survived his strength. He wished his present state of mind and body might not be ominous of the condition to which Ireland would be reduced, if this bill should become a law. He could not therefore yield even to his weakness. It was a subject which might animate the dead. He then took a view of the progress of the arrangement, and arraigned the insidious conduct of administration. In Ireland it was proposed by the Minister: in England it was reprobated by the same Minister. He had known children learn to play at cards, by playing the right hand against the left:—he had never before heard of a negociation being learned in that way. He said, a bill was not a mode of negociating; our law spoke only to ourselves—bound only ourselves;—it was absurd therefore to let a bill proceed. But the commercial part was out of the question; for this bill portended a surrender of the constitution and liberty of Ireland. If, said he, we should attempt so base an act, it would be void, as to the people. We may abdicate our representation, but the right remains with the people, and can be surrendered only by them. We may ratify our own infamy; we cannot ratify their slavery. He feared the British Minister was mistaken in the temper of Ireland, and judged of it by former times. Formerly the business here was carried on by purchase of majorities: there was a time when the most infamous measure was sure of being supported by as infamous a majority. But things were changed; the people were enlightened and

strong; they would not bear a surrender of their rights, which, he said, would be the consequence, if they submitted to this bill. It contained a covenant to enact such laws as England should think proper, that would annihilate the Parliament of Ireland. The people here must go to the bar of the English House of Commons for relief; and for a circuitous trade to England, we were accepting, he said, a circuitous constitution.

He said, it was different totally from the cases to which it had been compared—the settlement of 1779, or the Methuen treaty: there all was specific and defined—here all was fustian and uncertain. A power to bind externally, would involve a power also of binding internally; this law gave the power to Great Britain, of judging what would be a breach of the compact—of construing it—in fact, of taxing us as she pleased; while it gave her new strength to enforce our obedience. In such an event, he said, we must either sink into utter slavery, or the people must wade to a reassumption of their rights through civil blood, or be obliged to take refuge in an union, which he said, would be the annihilation of Ireland, and what he suspected the Minister was driving at. Even the Irish Minister, he said, no longer pretended to use his former language on this subject; formerly we were lost in a foolish admiration, at the long impeded march of oratoric pomp, with which the Secretary displayed the magnanimity of Great Britain. That kind of eloquence, he supposed, was formed upon some model, but he suspected that the light of political wisdom was more easily reflected than the heat of eloquence; yet we were in raptures even with the oratory of the Honourable Gentleman. However, he now had descended to an humble style. He talked no more of reciprocity, no more of emporium.

He then went into general observations, to show that this treaty would give no solid advantages to Ireland, but was a revocation of the grant of 1779. He said, he loved the liberty of Ireland; he would therefore vote against the bill, as subversive of that liberty; he would also vote against it as leading to a schism between the two nations, that must terminate in a civil war, or in an union at best. He was sorry, he said, that he troubled them so long, but he feared it might be the last time he should ever have an opportunity of addressing a free Parliament; and if, said he, the period is approaching, when the boasted constitution of Ireland will be no more, I own I feel a melancholy ambition in deserving that my name may be enrolled with those who endeavoured

to save it in its last moment. Posterity will be grateful for the last effort, though it should have failed of success.

In the House of Commons, on Monday, August 15, 1785, the Right Hon. Thomas Orde having intimated that he would not press the further consideration of the Commercial Regulation Bill during the session, which was in fact giving up the bill; and Mr. Flood having moved the following resolution,—

“Resolved, That we hold ourselves bound not to enter
“into any engagement to give up the sole and exclusive
“right of the Parliament of Ireland, to legislate for Ireland
“in all cases whatsoever, as well externally as commercially
“and internally:”—

Mr. Curran expressed the effusions of his joy, upon the victory this country had obtained. He said he would support the resolution proposed by the Honourable Member, because he thought it necessary to declare to the people, that their rights had not been solely supported by 110 independent gentlemen, but that if eight or ten of them had been absent, that those who had countenanced the measure, would have abandoned every idea of prosecuting it further. It had ever been the custom of our ancestors, when the constitution had been attacked, to enter into some spirited step for its support. Why was Magna Charta passed? It was passed not to give freedom to the people, but because the people were already free. Why was the repeal of the 6th of Geo. First? Not to give independence to the men of Ireland, but because Ireland was in itself an independent nation. This resolution did not go to give rights, but to declare that we will preserve our rights. We were told to be cautious how we commit ourselves with the Parliament of Great Britain: whether this threat carried with it more of prudence or timidity, he should leave gentlemen to determine. He rejoiced that the cloud which had lowered over them had passed away, and he declared he had no intention to wound the feelings of the Minister, by triumphing in his defeat; on the contrary, he might be said to rise with some degree of self-denial, when he gave to others an opportunity of exulting in the victory. The opposition in England had thrown many impediments in the way, but he would remember with gratitude, that the opposition there had supported the liberties of Ireland. When he saw them reprobating the attacks made upon the trial by Jury, when he saw them supporting the legislative

rights of Ireland, he could not refrain from giving them his applause. They well knew that an invasion of the liberty of Ireland would tend to an attack upon their own. The principle of liberty, thank Heaven, still continued in those countries:—that principle which had stained the fields of Marathon, stood in the pass to Thermopylæ, and gave to America independence. Happy it was for Ireland, that she had recovered her rights by victory, not stained by blood—not a victory bathed in the tears of a mother, a sister, or a wife—not a victory hanging over the grave of a Warren or a Montgomery, and uncertain whether to triumph in what she had gained, or to mourn over what she had lost!

As to the majority who had voted for bringing in the bill, the only way they could justify themselves to their constituents, was by voting for the resolution. As to the minority who had saved the country, they needed no vindication: but those who voted for the introduction of the bill must have waited for the committee, to show the nation that they would never assent to the fourth proposition. That opportunity, he said, could never arrive. The bill was at an end. The cloud that had been collecting so long, and threatening to break in tempest and ruin on our heads, had passed harmless away. The siege that was drawn round the constitution was raised, and the enemy was gone, "*Juvat ire, et Dorica castra;*" and they might now go abroad without fear, and trace the dangers they had escaped: here was drawn the line of circumvallation, that cut them off for ever from the eastern world; and there the corresponding one, that enclosed them from the west. Nor let us, said he, forget in our exultation to whom we are indebted for the deliverance. Here stood the trusty mariner [Mr. Conolly] on his old station, the mast-head, and gave the signal. Here [Mr. Flood] all the wisdom of the state was collected, exploring your weakness and your strength, detecting every ambuscade, and pointing to the hidden battery, that was brought to bear on the shrine of freedom. And there [Mr. Grattan] was exerting an eloquence more than human, inspiring, forming, directing, animating, to the great purposes of your salvation, &c. But I feel, said he, that I am leaving the question, and the bounds of moderation; but there is an ebullition in great excesses of joy, that almost borders on insanity. I own I feel something like it in the profuseness with which I share in the general triumph.

It was not, however, a triumph which he wished to enjoy at the expense of the Honourable Gentleman who had

brought in the bill, he was willing to believe, with the best intention. Whatever he might have thought before, he now felt no trace of resentment to the Honourable Gentleman. On the contrary, he wished that that day's intercourse, which would probably be their last, might be marked on his part with kindness and respect.

Mr. Curran said he was for letting the Right Honourable Gentleman easily down; he was not for depressing him with the triumph, but he was for calling him to share in the exultation. Upon what principle could the gentlemen who supported the previous question defend their conduct, unless it was in contradiction to the general rule of adhering to measures, not to the man? Here it was plain they were adhering to the man, not to the measure;—the measure had sunk, but the man was still afloat. Perhaps they thought it decent to pay a funeral compliment to his departure; yet he warned them how they pressed too eagerly forward; for as there could not be many bearers, some of them might be disappointed of the scarf or the cypress. He besought them now to let all end in good humour, and, like sailors, who had pursued different objects, when they got into port, shake hands with harmony.

SPEECH,

IN THE IRISH HOUSE OF COMMONS, MARCH 13, 1786,

ON

PENSIONS.

MR. FORBES having presented a bill to limit the amount of Pensions, which was received and read the first time, Mr. Mason moved, "That the second reading of the bill be postponed to the first of August."

Sir Boyle Roche opposed the bill, and said he "would not stop the fountain of royal favour, but let it flow freely, spontaneously, and abundantly, as Holywell in Wales, that turns so many mills."

Mr. Curran said—I object to adjourning this bill to the first of August, because I perceive, in the present disposi-

tion of the House, that a proper decision will be made upon it this night. We have set out upon our inquiry in a manner so honourable, and so consistent, that we have reason to expect the happiest success, which I would not wish to see baffled by delay.

We began with giving the full affirmative of this House, that no grievance exists at all; we considered a simple matter of fact, and adjourned our opinion; or rather we gave sentence on the conclusion, after having adjourned the premises. But I do begin to see a great deal of argument in what the learned Baronet has said; and I beg gentlemen will acquit me of apostacy, if I offer some reasons why the bill should not be admitted to a second reading.

I am surprised that gentlemen have taken up such a foolish opinion, as that our constitution is maintained by its different component parts, mutually checking and controlling each other: they seem to think with Hobbes, that a state of nature is a state of warfare; and that, like Mahomet's coffin, the constitution is suspended between the attraction of different powers. My friends seem to think that the Crown should be restrained from doing wrong by a physical necessity; forgetting, that if you take away from man all power to do wrong, you at the same time take away from him all merit of doing right; and by making it impossible for men to run into slavery, you enslave them most effectually. But if, instead of the three different parts of our constitution drawing forcibly in right lines, at opposite directions, they were to unite their power, and draw all one way, in one right line, how great would be the effect of their force, how happy the direction of this union! The present system is not only contrary to mathematical rectitude, but to public harmony; but if instead of privilege setting up his back to oppose prerogative, he was to saddle his back and invite prerogative to ride, how comfortably they might both jog along; and therefore it delights me to hear the advocates for the royal bounty flowing freely, and spontaneously, and abundantly, as Holywell in Wales. If the Crown grants double the amount of the revenue in pensions, they approve of their royal master, for he is the breath of their nostrils.

But we shall find that this complaisance, this gentleness between the Crown and its true servants, is not confined at home; it extends its influence to foreign powers. Our merchants have been insulted in Portugal, our commerce interdicted: what did the British lion do? Did he whet

his tusks? did he bristle up and shake his mane? did he roar? No—no such thing: the gentle creature wagged his tail for six years at the Court of Lisbon; and now we hear from the Delphic oracle on the Treasury bench, that he is wagging his tail in London to Chevalier Pinto, who, he hopes soon to be able to tell us, will allow his lady to entertain him as a lap-dog; and when she does, no doubt the British factory will furnish some of their softest woollens, to make a cushion for him to lie upon. But though the gentle beast has continued so long fawning and couching, I believe his vengeance will be great as it is slow; and that posterity, whose ancestors are yet unborn, will be surprised at the vengeance he will take.

This polyglot of wealth, this museum of curiosities, the pension list, embraces every link in the human chain, every description of men, women, and children, from the exalted excellence of a Hawke or a Rodney, to the debased situation of the lady who humbleth herself that she may be exalted. But the lessons it inculcates form its greatest perfection:—it teacheth, that sloth and vice may eat that bread which virtue and honesty may starve for after they had earned it. It teaches the idle and dissolute to look up for that support which they are too proud to stoop and earn. It directs the minds of men to an entire reliance on the ruling power of the state, who feed the ravens of the royal aviary, that cry continually for food. It teaches them to imitate those saints on the pension list that are like the lilies of the field—they toil not, neither do they spin, and yet are arrayed like Solomon in his glory. In fine, it teaches a lesson, which indeed they might have learned from Epictetus—that it is sometimes good not to be over virtuous: it shows, that in proportion as our distresses increase, the munificence of the Crown increases also—in proportion as our clothes are rent, the royal mantle is extended over us.

But notwithstanding that the pension list, like charity, covers a multitude of sins, give me leave to consider it as coming home to the Members of this House—give me leave to say, that the Crown, in extending its charity, its liberality, its profusion, is laying a foundation for the independence of Parliament; for hereafter, instead of orators or patriots accounting for their conduct to such mean and unworthy persons as freeholders, they will learn to despise them, and look to the first man in the state; and they will by so doing have this security for their independence, that while any man in the kingdom has a shilling, they will not want one.

Suppose at any future period of time the boroughs of Ireland should decline from their present flourishing and prosperous state—suppose they should fall into the hands of men who would wish to drive a profitable commerce, by having Members of Parliament to hire or let; in such a case, a Secretary would find great difficulty, if the proprietors of Members should enter into a combination to form a monopoly; to prevent which in time, the wisest way is to purchase up the raw material, young Members of Parliament, just rough from the grass; and when they are a little bitted, and he has got a pretty stud, perhaps of seventy, he may laugh at the slave-merchant: some of them he may teach to sound through the nose, like a barrel organ; some, in the course of a few months, might be taught to cry, hear! hear! some, chair! chair! upon occasion—though those latter might create a little confusion, if they were to forget whether they were calling inside or outside of those doors. Again, he might have some so trained that he need only pull a string, and up gets a repeating Member; and if they were so dull that they could neither speak nor make orations (for they are different things), he might have them taught to dance, *pedibus ire in sententiâ*.—This improvement might be extended; he might have them dressed in coats and shirts all of one colour; and, of a Sunday, he might march them to church two by two, to the great edification of the people, and the honour of the Christian religion; afterwards, like ancient Spartans, or the fraternity of Kilmainham, they might dine all together in a large hall. Good heaven! what a sight to see them feeding in public upon public viands, and talking of public subjects for the benefit of the public! It is a pity they are not immortal; but I hope they will flourish as a corporation, and that pensioners will beget pensioners, to the end of the chapter.

SPEECH,

IN THE IRISH HOUSE OF COMMONS, MARCH 12, 1787,

ON

PENSIONS.

Mr. FORBES presented a bill to limit Pensions; it was read a first time: he then moved, that it be read a second time on

the following day; this was opposed by the Chancellor of the Exchequer, who moved, that the bill should be read a second time on the first of August.

Mr. Curran said he felt too much respect for the excellent mover of the bill, and too strong a sense of the necessity of the measure, to give it only a silent support. He rejoiced, he said, in the virtuous perseverance of his Honourable Friend, in labouring for the establishment of our constitution, by securing the independence of Parliament. He would offer some reason in defence of the bill, though he felt the full force of the policy adopted by administration, to make any attempt of that kind either ridiculous or impossible. He observed the gentlemen, he said, consulting whether to bury the question under a mute majority, or whether to make a sham opposition to it by setting up the old gladiator of administration, new polished and painted for the field. They expected, he supposed, that men should shrink in silence and disgust from such a competition. He would, he said, defend the principle of the bill on the grounds of economy, but still more of constitution. He adverted to the frame of our civil state—it depended on an exact balance of its parts; but, he said, from our peculiar situation, that equipoise on which our liberty depends must be continually losing ground, and the power of the Crown continually increasing. A single individual can be vigilant and active, improving every occasion of extending his power; the people are not so; they are divided in sentiment, in interest without union, and therefore without co-operation, and from the necessity of bringing the constitution frequently back to its first principles; but this, he said, was doubly necessary to do by law, in a country where a long system of dividing the people had almost extinguished that public mind, that public vigilance and jealousy, with which the conduct of the Crown was watched over in Great Britain. But further, he said, it was rendered necessary by the residence of our King in another country. His authority must be delegated first to a Viceroy, and next it fell to a Secretary, who could have no interest in the good of the people, no interest in future fame, no object to attract him, but the advancement of his dependants. Then, he said, the responsibility that binds an English King to moderation and frugality was lost here in the confusion of persons, or in their insignificance. This, he said, might be deemed an unusual language in that House, but he assured the Right Honourable Secretary, he did not speak with any

view of disturbing his personal feelings; he did not admire, nor would he imitate the cruelty of the Sicilian tyrant, who amused himself with putting insects to the torture; he was therefore stating facts. What responsibility, said he, can be found or hoped for in an English Secretary? estimate them fairly, not according to the adulation that lifts them into a ridiculous importance while they are among you, or the alike unmerited contumely that is heaped upon them by disappointment and shame when they leave you. But what have they been in fact?—why, a succession of men, sometimes with heads, sometimes with hearts, oftener with neither.

But as to the present Right Honourable Secretary, it was peculiarly ridiculous to talk of his responsibility, or his economy, to the people: his economy was only to be found in reducing the scanty pittance, which profusion had left for the encouragement of our manufactures; or in withholding from the undertakers of a great national object, that encouragement that had been offered them on the express faith of Parliament; unless, perhaps, it were to be looked for in the pious plan of selling the materials of houses of religious worship, on a principle of economy. But where will you look, said he, for his responsibility as a Minister? You will remember his commercial propositions. They were proposed to this country on his responsibility. You cannot forget the exhibition he made; you cannot have yet lost his madrigal on reciprocity; but what was the event? He went to Great Britain with ten propositions, and he returned with double the number; disclaimed and abandoned by those to whom he belonged, and shorn of every pretension to responsibility; but look for it in the next leading feature of his administration.

We gave an addition of £140,000 in taxes, on the express compact and condition of confining expense within the limits of revenue. Already has that compact been shamefully evaded: but what says the responsible gentleman? Why, he stood up in his place, and had the honest confidence boldly to deny the fact. Now, said he, I should be glad to ask, who that Right Honourable Gentleman is? Is he the whole House of Commons?—if he be, he proposed the compact. Is he the King?—he accepted it by his Viceroy. Is he the Viceroy?—he accepted it by himself. In every character that could give such a compact either credit, or dignity, or stability, he has either proposed or ratified it; in what character, then, does the Right Honourable Gentleman deny it?—why, in his own; in that of a Right Honourable Gentleman. Can any man, then, said he, be so silly as to think

that so barefaced a spirit of profusion can be stopt by any thing less than a law?—Or can any man point out any ground on which we can confide in the Right Honourable Gentleman's affection to the interest or even the peace of this country? At a time when we are told that the people are in a state of tumult little short of rebellion, when you ought to wish to send an angel to recall the people to their duty, and restore the credit of the laws, what does he do?—he keeps three judicial places, absolute, vacant, or sinecure places, as if in this country not officers but offices are to become superannuated; and he sends the commission, with a job tacked to it, to be displayed in the very scene of this supposed confusion.—Would this contemptuous trifling with the public be borne in Great Britain? No, sir; but what the substance of an English Minister, with all his talents, would not dare to attempt in that country, his fetch is able to achieve, and with impunity, in this.

But a Right Honourable Member opposes the principle of the bill, as being in restraint of the royal bounty. I agree with him in this sentiment, but I differ from this argument. It becomes the dignity and humanity of a generous people, to leave it in the power of the sovereign to employ some part of the public wealth for honourable purposes, for rewarding merit, for encouraging science. Nor would it become us to inquire too narrowly into every casual or minute misapplication; but a gross and general application of the people's money to the encouragement of every human vice, is a crying grievance that calls on every man to check it—not by restraining the bounty of the Crown, but curbing the profusion of Irish administrations. The pension list, at the best of times, was a scandal to this country; but the present abuses of it, he said, went beyond all bounds, and almost justified what he would formerly have considered as shameful. If a great officer of state, for instance, finds that the severity of business requires the consolation of the tender passion, he courts through the pension list, and the lady, very wisely, takes hold of the occasion, which, perhaps, could not be taken of the lover, and seizes time by the forelock. Why, sir, we may pass over a little treaty of that sort; it may naturally enough fall under the articles of concordatum or contingencies; but that unhappy list has been degraded by a new species of prostitution that was unknown before: the granting of honours and titles, to lay the foundation for the grant of a pension; the suffering any man to steal a dignity, for the purpose that a barren beggar steals a child. It was reducing

the honours of the state from badges of dignity, to badges of mendicancy.

He then adverted to the modern practice of doubling the pensions of Members of that House, who were unhappily pensioners already. Was the Secretary, he said, afraid of their becoming converts? Was it necessary to double-bolt them with pensions? Was there really so much danger that little Tricksey would repent and go into a nunnery, that the kind keeper must come down with another hundred, to save her from becoming honest?

But a Right Honourable Gentleman, he said, had made another objection, rather inconsistent with his former:—he feared it would take away the control of Parliament on pensions within the limits of the act proposed. The objection was not, therefore, founded in fact, at the same time that the argument admitted that the unlimited power of pensioning was a grievance that ought to be remedied by some effectual control; such, he said, was the principle and the effect of this bill, if carried into a law. It would not restrain the Crown; it would not restrain a Lord-Lieutenant; it would only restrain a Secretary from that shameful profusion of the public treasure, unimputable and unknown to his Majesty or his Viceroy, which was equally disgraceful to the giver and receiver.—It was a bill to preserve the independence of Parliament; it was a bill to give us the constitution of Great Britain, when we had it not before. It was peculiarly necessary, when we had adopted a penal law of Great Britain, giving a new force to the executive Magistrate, that we should also adopt that law of Great Britain, which might secure the rights of the people: it was a law necessary as a counterpoise to the riot-act: it was a law of invention, and if necessary, prevention; for if, said he, you wait till the evil, which my Right Honourable Friend is anxious to guard against, shall have actually fallen upon this country, the corruption will be universal, and the remedy impossible.

SPEECH,

IN THE IRISH HOUSE OF COMMONS, OCTOBER 17, 1798,

ON

CATHOLIC EMANCIPATION.

Mr. GRATTAN moved and Mr. George Ponsonby seconded the following resolution:—"That the admissibility of persons

“professing the Roman Catholic religion to seats in Parliament, is consistent with the safety of the Crown, and the connexion of Ireland with Great Britain.”

Mr. G. Ogle having moved the order of the day :—

Mr. Curran began by declaring that he had no words to express the indignation he felt at the despicable attempt to skulk from the discussion of so important and so necessary a question, by the affectation of an appeal to our secrecy and our discretion ; the ludicrous, the ridiculous secrecy of a public assembly ; the nonsense of pretending to conceal from the world what they know as well or better than ourselves ; the rare discretion of an Irish Parliament hiding from the executive directory of the French republic the operations of their own armies ; concealing from them their victories in Italy, or their humiliation of Great Britain ; concealing from them the various coquetry of her negociations, and her now avowed solicitations of a peace. As ridiculous and as empty was the senseless parade of affecting to keep our own deliberations a secret. Rely upon it, sir, said he, if our enemies condescend to feel any curiosity as to our discussion, you might as well propose to conceal from them the course of the Danube, or the course of the Rhine, as the course of a debate in this assembly, as winding, perhaps, and perhaps as muddy as either. But the folly of the present advocates for silence and for secrecy went still farther ;—it proposed to keep all these matters a profound secret from ourselves ; it went to the extravagant length of saying, that if we were beaten, we were not to deliberate upon the means of repairing our disasters, because that would be to own that we were beaten ; that if the enemy was at our gates, it would not be prudent to acknowledge so terrifying a fact, even in considering the means of repelling him ; that if our people were disaffected, we ought to be peculiarly cautious of any measures that could possibly tend to conciliation and union, because the adoption, or even the discussion of such measures, would be in effect to tell ourselves, and to tell all the world, that the people were disaffected. He said, that the infatuation or the presumption of Ministers went even farther than this :—that it insisted upon the denial and avowal of the very same facts ; that we were to be alarmed with an invasion, for the purpose of making us obsequious to all the plans of Ministers, for intrenching themselves in their places ; that we were to be panic-struck for them, but disdainful for ourselves ; that our people were to be disaffected, and the consequences of that disaffection to be the most dangerous

and the most imminent, for the purpose of despoiling ourselves of our best and most sacred privileges. So imminent was this danger, that it was declared by Ministers and by their adherents, that in order to preserve our liberties for ever, it was absolutely necessary to surrender them for a time—the surrender had been actually made. So frightfully disunited and divided were we, that we could not venture to trust ourselves with the possession of our freedom, but we were all united as one man against redressing the grievances of the great majority of ourselves; we were all united as one man against the conciliation of our animosities, and the consolidation of our strength. He declared, that for one, he never would submit to be made the credulous dupe of an imposture so gross and so impudent: he knew that the times were critical indeed; he knew that it was necessary to open our eyes to our danger, and to meet it in the front; to consider what that danger was, and to consider of the best, and perhaps the only possible means of averting it. For these reasons, he considered the resolution not only a measure of justice and of honesty, but of the most pressing necessity.

He knew, he said, that a trivial subject of the day would naturally engage them more deeply than any more distant object, of however greater importance; but he begged they would recollect, that the petty interest of party must expire with themselves; and that their heirs must be, not statesmen, nor placemen, nor pensioners, but the future people of the country at large. He knew of no so awful a call upon the justice and wisdom of an assembly, as the reflection that they were deliberating on the interests of posterity.

The first step of Ministers was to create a division among the Catholics themselves; the next was to hold them up as a body formidable to the English government, and to their Protestant fellow-subjects; but he conjured the House to be upon their guard against those despicable attempts to traduce their people, to alarm their fears, or to inflame their resentment. Gentlemen have talked as if the question was, whether we may, with safety to ourselves, relax or repeal the laws which have so long concerned our Catholic fellow-subjects? The real question is, whether you can, with safety to the Irish constitution, refuse such a measure? It is not a question merely of their sufferings or their relief; it is a question of your own preservation. There are some maxims which an honest Irishman will never abandon, and by which every public measure may be fairly tried. These are, the preservation of the constitution upon the principles

established at the Revolution, in church and state; and next, the independency of Ireland, connected with Britain as a confederated people, and united indissolubly under a common and inseparable crown. If you wish to know how these great objects may be affected by a repeal of those laws, see how they were affected by their enactment. Here you have the infallible test of fact and experience; and wretched indeed must you be, if false shame, false pride, false fear, false spirit, can prevent you from reading that lesson of wisdom which is written in the blood and the calamities of your country. Here Mr. Curran went into a detail of the property laws, as they affected the Catholics of Ireland. He described them as destructive of arts, of industry, of private morals and public order; as extirpating even the Christian religion among them, and reducing them to the condition of savages and rebels, disgraceful to humanity, and formidable to the state. Having traced the progress and effects of those laws, from the Revolution to 1779; let me now ask you, said he, how have those laws affected the Protestant subject and the Protestant constitution? In that interval, were they free? did they possess that liberty which they denied to their brethren? No, sir; where there are inhabitants, but no people, there can be no freedom; unless there be a spirit, and what may be called a pull, in the people, a free government cannot be kept steady or fixed in its seat. You had indeed a government, but it was planted in civil dissension, and watered in civil blood; and whilst the virtuous luxuriance of its branches aspired to heaven, its infernal roots shot downward to their congenial regions, and were intertwined in hell. Your ancestors thought themselves the oppressors of their fellow-subjects, but they were only their jailors; and the justice of Providence would have been frustrated, if their own slavery had not been the punishment of their vice and their folly.

But are those facts for which we must appeal to history? You all remember the year one thousand seven hundred and seventy-nine. What were you then? Your constitution, without resistance, in the hands of the British Parliament; your trade in many parts extinguished, in every part coerced. So low were you reduced to beggary and servitude, as to declare, that unless the mercy of England was extended to your trade, you could not subsist. Here you have an infallible test of the ruinous influence of those laws, in the experience of a century—of a constitution surrendered, and commerce utterly extinct. But can you learn

nothing on this subject from the events that followed? In 1778, you somewhat relaxed the severity of those laws, and improved, in some degree, the condition of the Catholics. What was the consequence even of a partial union with your countrymen? The united efforts of the two bodies restored that constitution which had been lost by their separation. In 1782, you became free. Your Catholic brethren shared the danger of the conflict; but you had not justice or gratitude to let them share the fruits of the victory. You suffered them to relapse into their former insignificance and depression. And let me ask you, has it not fared with you according to your deserts? Let me ask you, if the Parliament of Ireland can boast of being now less at the feet of the British Minister, than at that period it was of the British Parliament? Here he animadverted on the conduct of the administration for some years past, in the accumulation of public burdens and parliamentary influence; but, said he, it is not the mere increase of debt, it is not the creation of one hundred and ten placemen and pensioners, that forms the real cause of the public malady. The real cause is the exclusion of your people from all influence upon the representative. The question therefore is, whether you will seek your own safety in the restoration of your fellow-subjects, or whether you will choose rather to parish than to be just? He then proceeded to examine the objections to a general incorporation of the Catholics. On general principles, no man could justify the deprivation of civil rights on any ground but that of forfeiture for some offence. The Papist of the last century might forfeit his property for ever, for that was his own; but he could not forfeit the rights and capacities of his unborn posterity. And let me observe, said he, that even those laws against the offender himself were enacted while injuries were recent, and while men were not unnaturally alarmed by the consideration of a French Monarchy, a Pretender, and a Pope—things that we now read of, but can see no more. But are they disaffected to liberty? On what ground can such an imputation be supported? Do you see any instance of any man's religious theory governing his civil or political conduct? Is Popery an enemy to freedom?—look to France, and be answered. Is Protestantism necessarily its friend?—you are Protestants, look to yourselves, and be refuted. But look further—do you find even the religious sentiments of sectaries marked by the supposed characteristics of their sects? Do you find that a Protestant Briton can be a bigot, with only two

sacraments, and a Catholic Frenchman a Deist, admitting seven? But you affect to think your property in danger by admitting them into the state. That has been already refuted, but you have yourselves refuted your own objection. Seventeen years ago you expressed the same fear, yet you made the experiment; you opened the door to landed property, and the fact has shown the fear to be without foundation.

But another curious topic has been stated again—the Protestant ascendancy is in danger. What do you mean by that word? Do you mean the right, and property, and dignities of the church? If you do, you must feel they are safe. They are secured by the law, by the coronation oath, by a Protestant Parliament, a Protestant King, a Protestant confederated nation. Do you mean the free and protected exercise of the Protestant religion? You know it has the same security to support it. Or do you mean the just and honourable support of the numerous and meritorious clergy of our own country, who really discharge the labours and duties of the ministry? As to that, let me say, that if we felt on that subject as we ought, we should not have so many men of talents and virtues struggling under the difficulties of their scanty pittance, and feeling the melancholy conviction that no virtues or talents can give them any hope of advancement. If you really mean the preservation of every right and every honour that can dignify a Christian priest, and give authority to his function, I will protect them as zealously as you. I will ever respect and revere the man who employs himself in diffusing light, hope, and consolation. But if you mean by ascendancy, the power of persecution, I detest and abhor it. If you mean the ascendancy of an English school over an Irish university, I cannot look upon it without aversion. An ascendancy of that form raises to my mind a little greasy emblem of stall-fed theology, imported from some foreign land, with the graces of a lady's maid, the dignity of a side-table, the temperance of a larder, its sobriety the dregs of a patron's bottle, and its wisdom the dregs of a patron's understanding, brought hither to devour, to degrade, and to defame. Is it to such a thing you would have it thought that you affixed the idea of the Protestant ascendancy? But it is said, admit them by degrees, and do not run the risk of too precipitate an incorporation. I conceive both the argument and the fact unfounded. In a mixed government, like ours, an increase of the democratic power can scarcely ever be dangerous. Not one of the three

powers of our constitution acts singly in the line of its natural direction; each is necessarily tempered and diverted by the action of the other two: and hence it is, that though the power of the Crown has, perhaps, far transcended the degree to which theory might confine it, the liberty of the British constitution may not be in much danger. An increase of power to any of the three, acts finally upon the state with a very diminished influence; and, therefore, great indeed must be that increase in any one of them, which can endanger the practical balance of the constitution. Still, however, I contend not against the caution of a gradual admission. But let me ask you, can you admit them any otherwise than gradually? The striking and melancholy symptom of the public disease is, that if it recovers at all, it can be only through a feeble and lingering convalescence. Yet even this gradual admission your Catholic brethren do not ask, save under every pledge and every restriction which your justice and wisdom can recommend to your adoption.

He called on the House to consider the necessity of acting with a social and conciliatory mind, remarking, that contrary conduct may perhaps protract the unhappy depression of our country, but a partial liberty cannot long subsist. A disunited people cannot long subsist. With infinite regret must any man look forward to the alienation of three millions of our people, and to a degree of subserviency and corruption in the fourth: I am sorry, said he, to think it is so very easy to conceive, that in case of such an event the inevitable consequence would be, *an union with Great Britain*. And if any one desires to know what that would be, I will tell him:—*It would be the emigration of every man of consequence from Ireland; it would be the participation of British taxes without British trade; it would be the extinction of the Irish name as a people. We should become a wretched colony, perhaps leased out to a company of Jews, as was formerly in contemplation, and governed by a few tax-gatherers and excisemen; unless possibly you may add fifteen or twenty couple of Irish members, who might be found every session sleeping in their collars under the manger of the British Minister.*

Mr. Curran then entered largely into the state of the empire and of its allies; of the disposition of our enemies towards Great Britain; of the nature of their political principles; and of the rapid dissemination of those principles. He declared that it was difficult to tell whether the dissemination of those principles was likely to be more encouraged

by the continuance of the war, or by the establishment of a peace; and if the war was, as has been repeatedly insisted on, a war on our part for the preservation of social order and of limited monarchy, he strongly urged the immediate necessity of making those objects the common interest and the common cause of every man in the nation. He reprobated the idea of any disloyalty in the Catholics, an idea which, he said, was sometimes more than intimated, and sometimes as vehemently disclaimed, by the enemies of Catholic emancipation; but, he said, the Catholics were men, and were of course sensible to the impression of kindness, and injury, and of insult; that they knew their rights, and felt their wrongs; and that nothing but the grossest ignorance, or the meanest hypocrisy, could represent them as cringing with a slavish fondness to those who oppressed and insulted them. He sought, he said, to remove their oppressions, in order to make the interests of the whole nation one and the same; and to that great object, the resolution moved by his Right Honourable Friend manifestly tended; and he lamented exceedingly, that so indecent and so disingenuous a way of evading that motion had been resorted to, as passing to the order of the day; a conduct, that however speciously the gentlemen who had adopted it might endeavour to excuse, he declared, could be regarded by the Catholics, and by the public, no otherwise than as an expression of direct hostility to the Catholic claims. He animadverted with much severity upon an observation from the other side of the House, that the Catholics were already in possession of political liberty, and were only seeking for political power. He asked, what was it then that we were so anxiously withholding, and so greedily monopolizing? and declared, that the answer which had been given to that observation, by a Learned and Honourable Friend near him [Mr. William Smith] was that of a true patriot, and of a sound constitutional lawyer; namely, that civil liberty was a shadow, without a sufficient portion of political power to protect it.

Having replied to the arguments of several Members that had preceded him in the debate, Mr. Curran, observing on the speech that had been delivered by Dr. Duigenan, entertained the House, for about half an hour, with the liveliest sallies of wit and humour. He said, that the learned Doctor had made himself a very prominent figure in the debate! Furious, indeed, had been his anger, and manifold his attack; what argument, or what man, or what thing, had he

not abused? Half choked by his rage in refuting those who had spoke, he had relieved himself by attacking those who had not spoke; he had abused the Catholics, he had abused their ancestors, he had abused the merchants of Ireland, he had abused Mr. Burke, he had abused those who voted for the order of the day. I do not know, said Mr. Curran, but I ought to be obliged to the learned Doctor, for honouring me with a place in the invective; he has called me the bottle-holder of my Right Honourable Friend; sure I am, said he, that if I had been the bottle-holder of both, the learned Doctor would have less reason to complain of me than my Right Honourable Friend; for him I should have left perfectly sober, whilst it would very clearly appear, that, with respect to the learned Doctor, the bottle had not only been managed fairly, but generously; and, that if, in furnishing him with liquor, I had not furnished him with argument, I had, at least, furnished him with a good excuse for wanting it; with the best excuse for that confusion of history, and divinity, and civil law, and canon law, that rollocking mixture of politics, and theology, and antiquity, with which he has overwhelmed the debate; for the havoc and carnage he has made of the population of the last age, and the fury with which he seemed determined to extirminate, and even to devour the population of this; and which urged him, after tearing and gnawing the characters of the Catholics, to spend the last efforts of his rage, with the most unrelenting ferocity, in actually gnawing their names [alluding to Dr. Duigenan's pronounciation of the name of Mr. Keogh, and which Mr. Curran said was a kind of pronunciatory defamation.] In truth, sir, said he, I felt some surprise, and some regret, when I heard him describe the sceptre of lath, and the tiara of straw, and mimic his bedlamite Emperor and Pope with such refined and happy gesticulation, that he could be prevailed on to quit so congenial a company. I should not, however, said he, be disposed to hasten his return to them, or to precipitate the access of his fit, if by a most unlucky felicity of indiscretion, he had not dropped some doctrines which the silent approbation of the Minister seemed to have adopted. Mr. Curran said, he did not mean amongst these doctrines to place the learned Doctor's opinions touching the Revolution, nor his wise and valourous plan, in case of an invasion, of arming the beadles and the sextons, and putting himself in wind for an attack upon the French by a massacre of the Papists; the doctrine he meant was, that Catholic franchise was inconsistent with British con-

nexion. Strong, indeed, said he, must the Minister be in so wild and desperate a prejudice, if he can venture, in the fallen state of the empire, under the disasters of the war, and with an enemy at the gate, if he can dare to state to the great body of the Irish nation, that their slavery is the condition of their connexion with England; that she is more afraid of yielding to Irish liberty, than of losing Irish connexion; and the denunciation, he said, was not yet upon record; it might yet be left with the learned Doctor, who, he hoped, had embraced it only to make it odious, had hugged it in his arms with the generous purpose of plunging with it into the deep, and exposing it to merited derision, even at the hazard of the character of his own sanity. It was yet in the power of the Minister to decide whether a blasphemy of this kind should pass for the mere ravings of frenzy, or for the solemn and mischievous lunacy of a Minister: he called therefore again, to rouse that Minister from his trance, and in the hearing of the two countries, to put that question to him, which must be heard by a third, whether, at no period, upon no event, at no extremity, we were to hope for any connexion with Britain, except that of the master and the slave; and this even without the assertion of any fact that could support such a proscription? It was necessary, he found, to state the terms and the nature of the connexion; it had been grossly misrepresented; it was a great federal contract between perfectly equal nations, pledging themselves to equal fate, upon the terms of equal liberty, upon perfectly equal liberty. The motive to that contract was the mutual benefit to each; the object of it their mutual and common benefit; the condition of the compact was, the honest and fair performance of it, and from that only arose the obligation of it. If England showed a decided purpose of invading our liberty, the compact, by such an act of foulness and perfidy, was broken, and the connexion utterly at an end: but, he said, the resolution moved for by his Right Honourable Friend to the test of this connexion, to invade our liberty, was a dissolution of it. But what is liberty, as known to our constitution? It is a portion of political power necessary to its conservation; as, for instance, the liberty of the Commons of those kingdoms is that right, accompanied with a portion of political power, to preserve it against the Crown, and against the Aristocracy. It is by invading the power, that the right is attacked in any of its constituent parts; hence it is, that if the Crown shows a deliberate design of so destroying it, it is an abdication; and

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let it be remembered, that by our compact we have given up no constitutional right. He said, therefore, that he was warranted, as a constitutional lawyer, in stating, that if the Crown or its Ministers, by force or by fraud, destroyed that fair representation of the people, by which alone they could be protected in their liberty, it was a direct breach of the contract of connexion; and he could not scruple to say, that if a House of Commons could be so debauched, as to deny the right stated in the resolution, it was out of their own mouths conclusive evidence of the fact. He insisted that the claim of the Catholics to that right, was directly within the spirit of the compact; and what have been the arguments advanced against the claim? One was an argument which, if founded in fact, would have some weight: it was, that the Catholics did not make the claim at all. Another argument was used, which he thought had as little foundation in fact, and was very easy to be reconciled to the other; it was, that the Catholics made their claim with insolence, and attempted to carry their object by intimidation. Let gentlemen take this fact if they please, in opposition to their own denial of it. The Catholics then do make the demand; is their demand just? Is it just that they should be free? Is it just that they should have franchise? The justice is expressly admitted; why not given then? The answer is, they demand it with insolence. Suppose that assertion, false as it is in fact, to be true; is it any argument with a public assembly, that any incivility of demand can cover the injustice of refusal? How low must that assembly be fallen, which can suggest as an apology for the refusal of an incontestible right, the answer which a bankrupt buck might give to the demand of his tailor; he will not pay the bill, because "the rascal had dared to threaten his honour." As another argument against their claims, their principles had been maligned; the experience of a century was the refutation of the aspersion. The articles of their faith had been opposed by the learned Doctor, to the validity of their claims. Can their religion, said he, be an objection, where a total absence of all religion, where atheism itself is none? The learned Doctor, no doubt, thought he was praising the mercy with which they had been governed, when he dilated upon their poverty; but can poverty be an objection in an assembly, whose humble and Christian condescension shuts not its doors even against the common beggar? He had traduced some of them by name; "Mr. Byrne, and Mr. Keogh, and four or five ruffians from the Liberty:" but, said Mr. Curran,

this is something better than frenzy; this is something better than the want of mere feeling and decorum; there could not, perhaps, be a better way of evincing a further and more important want of the Irish nation—the want of a reformed representation of the people in Parliament. For what can impress the necessity of it more strongly upon the justice, upon the humanity, the indignation, and the shame of an assembly of Irish gentlemen, than to find the people so stripped of all share in the representation, as that the most respectful class of our fellow-citizens, men who had acquired wealth upon the noblest principle, the practice of commercial industry and integrity, could be made the butts of such idle and unavailing, such shameful abuse, without the possibility of having an opportunity to vindicate themselves; when men of that class can be exposed to the degradation of unanswered calumny, or the more bitter degradation of eleemosynary defence? Mr. Curran touched upon a variety of other topics, and concluded with the most forcible appeal to the Minister, to the House, and to the country, upon the state of public affairs at home and abroad. He insisted that the measure was not, as it had been stated to be, a measure of mere internal policy; it was a measure that involved the question of right and wrong, of just and unjust; but it was more—it was a measure of the most absolute necessity, which could not be denied, and which could not safely be delayed. He could not, he said, foresee future events; he could not be appalled by the future, for he could not see it; but the present he could see, and he could not but see that it was big with danger; it might be the crisis of political life, or political extinction; it was a time fairly to state to the country, whether they had any thing, and what, to fight for; whether they are to struggle for a connexion of tyranny, or of privilege; whether the administration of England will let us condescend to forgive the insolence of her happier days; or whether, as the beams of her prosperity have wasted and consumed us, so even the frost of her adversity shall perform the deleterious effects of fire, and burn upon our privileges and our hopes for ever.

SPEECH,

AT THE BAR OF THE IRISH HOUSE OF COMMONS,

IN BEHALF OF

LADY PAMELA FITZGERALD,

AND

HER INFANT CHILDREN.

Mr. CURRAN said, he rose in support of a petition presented on behalf of Lord Henry Fitzgerald, brother of the deceased Lord Edward Fitzgerald; of Pamela, his widow; Edward, his only son and heir, an infant of the age of four years; Pamela, his eldest daughter, of the age of two years; and Lucy, his youngest child, of the age of three months; against the bill of attainder then before the Committee. The bill of attainder, he said, had formed the division of the subject into two parts. It asserted the fact of the late Lord Edward's treason, and, secondly, it purported to attain him, and to vest his property in the Crown. He would follow the same order. As to the first bill, he could not but remark upon the strange looseness of the allegation: the bill stated that he had, during his life, and since the first of November last, committed several acts of high treason, without stating what, or when, or where, or with whom: it then affected to state the different species of treason of which he had been guilty; namely, conspiring to levy war, and endeavouring to persuade the enemies of the King to invade the country;—the latter allegation was not attempted to be proved—the conspiring, without actually levying war, was clearly no high treason, and had been repeatedly so determined. Upon this previous and important question, namely, the guilt of Lord Edward (and without the full proof of which no punishment can be just), he had been asked by the committee, if he had any defence to go into? He was confounded by a question which he could not answer; but upon a very little reflection, he saw in that very confusion the most conclusive proof of the injustice of the bill. For what, he said, can be more flagrantly unjust,

than to inquire into a fact, of the truth or falsehood of which no human being can have knowledge, save the informer who comes forward to assert it. Sir, I now answer the question. I have no defensive evidence! I have no case! it is impossible I should:—I have often of late gone to the dungeon of the captive, but never have I gone to the grave of the dead, to receive instructions for his defence—nor in truth have I ever before been at the trial of a dead man! I offer, therefore, no evidence upon this inquiry; against the perilous example of which I do protest on behalf of the public, and against the cruelty and injustice of which I do protest in the name of the dead father, whose memory is sought to be dishonoured; and of his infant orphans, whose bread is sought to be taken away. Some observations, and but a few, upon the assertions of Reynolds, I will make. Mr. Curran then remarked upon the credit of Reynolds by his own confession. I do verily believe him, he observed, in that instance—even though I have heard him assert it upon his oath—by his own confession, an informer, and a bribed informer;—a man whom even respectable witnesses had sworn in a Court of Justice, upon their oaths, not to be credible on his oath;—a man upon whose single testimony no Jury ever did, nor ever ought, to pronounce a verdict of guilty; a kind of man to whom the law resorts with abhorrence, and from necessity, in order to set the criminal against the crime; but who is made use of by the law for the same reason that the most noxious poisons are resorted to in medicine. If such be the man, look for a moment at his story; he confines himself to mere conversation only, with a dead man! He ventures not to introduce any third person, living or even dead!—he ventures to state no act whatever done—he wishes, indeed, to asperse the conduct of Lady Edward Fitzgerald; but he well knew that, even were she in the country, she could not be adduced as a witness to disprove him. See, therefore, if there be any one assertion to which credit can be given, except this—that he has sworn, and forsworn, that he is a traitor; that he has received five hundred guineas to be an informer; and that his general reputation is, to be utterly *unworthy of credit*.

As to the papers, it is sufficient to say, that no one of them, nor even all of them, were even asserted to contain any positive proof against Lord Edward; that the utmost that could be deduced from them, was nothing more than doubt or conjecture, which, had Lord Edward been living, might have been easily explained, to explain which was now im-

possible, and upon which to found a sentence of guilt would be contrary to every rule of justice or humanity.

Was this bill of attainder warranted by the principles of reason? the principles of forfeiture in the law of treason? or the usage of Parliament in bills of attainder? The subject was of necessity very long; it had nothing to attract attention, but much to repel it. But he trusted that the anxiety of the committee for justice, notwithstanding any dulness either in the subject or in the speaker, would secure to him their attention. Mr. Curran then went into a minute detail of the principles of the law of forfeiture for high treason. The laws of the Persians and Macedonians extended the punishment of traitor to the extinction of all his kindred. The law subjected the property and life of every man to the most complicated despotism, because the loyalty of every individual of his kindred was as much a matter of wild caprice, as the will of the most arbitrary despot could be.

This principle was never adopted in any period of our law: at the earliest times of the Saxons, the law of treason acted directly only on the person of the criminal; it took away from him what he actually had to forfeit—his life and property. But as to his children, the law disclaimed to affect them directly; they suffered, but they suffered by a necessary consequence of their father's punishment, which the law could not prevent, and never directly intended. It took away the inheritance, because the criminal, at the time of taking it away, had absolute dominion over it, and might himself have conveyed it away from his family. This, he said, was proved by the instances of additional fees at the common law, and estates tail since the statute *de Donis*. In the former case the tenant did not forfeit until he had acquired an absolute dominion over the estate by the performance of the condition. Neither in the latter case was the estate tail made forfeitable, until the tenant in tail had become enabled in two ways to obtain the absolute dominion, by a common recovery, or by a fine. Until then the issue in tail, though not only the children of the tenant, but taking from him his estate by descent, could not be disinherited by his crime. Here is a decisive proof, that even the early law of treason never intended to extend the punishment of the traitor to his children as such; but even this direct punishment upon the traitor himself was to take effect only upon a condition suggested by the unalterable rules of natural justice, namely, a judgment founded upon conviction, against which he might have made his defence;

or upon an outlawry, where he refused to abide his trial. In that case he was punished, because during his life the fact was triable, because during his life the punishment could act directly upon his person; because during his life the estate was his to convey, and therefore his to forfeit.

But if he died without attainder, a fair trial was impossible, because a fair defence was impossible; a direct punishment upon his person was impossible, because he could not feel it; and a confiscation of his estate was equally impossible, because it was then no longer his, but was vested in his heir, to whom it belonged by a title as good as that by which it had ever belonged to him in his lifetime, namely, the known law of the country.

As to a posthumous forfeiture of lands, that appears to have been attempted by inquest after death. But so early as the eighth of Edward the Third, the legality of such presentments was disallowed by the Judges. And there is no lawyer at this day who can venture to deny, that since the twenty-fifth and thirty-fourth of Edward the Third, no estate of inheritance can regularly be forfeited, save by attainder in the life of the party; therefore, the law of the country being that unless the descent was interrupted by an actual attainder in the lifetime of the criminal, it became vested in the heir, the moment it did descend, the heir became seized by a title the most favoured in law. He might perhaps have been considered as a purchaser for the most valuable consideration, his mother's marriage, of which he was the issue. Why then was posthumous attainder excluded from the protective law of treason? why has it never since been enacted by a prospective law?—clearly for this reason; that in its own nature it is inhuman, impolitic, and unjust.

But it is said, this may be done by a bill of attainder; that the Parliament is omnipotent, and therefore may do it; and that it is a proceeding familiar to our constitution. As to the first, it could not be denied that the Parliament was in the power of the country; but an argument from the existence of a power to the exercise of it in any particular instance, is ridiculous and absurd. From such an argument it would follow, that it must do whatever it is able to do; and that it must be stripped of the best of all power, the power of abstaining from what is wrong.

To show that such a bill ought not to pass, Mr. Curran argued:—First, because every argument against the justice or the policy of a prospective was tenfold strong against a

retrospective law; because every *ex post facto* law was in itself an exercise of despotical power: when it altered the law of property, it was peculiarly dangerous; when it punished the innocent for the guilty, it was peculiarly unjust; when it affected to do that which the criminal, as it then stood, could not do, it acted peculiarly against the spirit of the constitution; which was to contract and restrain penal law by the strictest construction, and not to add to it by vindictive innovation. But, he said, he was warranted to go much farther, upon the authority of the British legislature itself, and to say, that the principle of forfeiture, even in the prospective law, was altogether repugnant to the spirit of the British constitution.

The statutes of Anne and of George the Second have declared, that after the death of the Pretender and of his sons, no such forfeiture should or ought to exist. In favour of that high authority, every philosophical and theoretic writer, Baron Montesquieu, the Marquis Beccaria, and many others, might be cited; against it, no one writer of credit or character, that had come to his hands. Of the late Mr. Yorke he did not mean to speak with disrespect; he was certainly a man of learning and genius; but it must be observed, he wrote for a party and for a purpose; he wrote against the repeal of the law of forfeiture, more than for its principle; of that principle he expressly declines entering into a direct defence. But for the extending of that principle farther than it is already law, the slightest insinuation cannot be found in his treatise.

But it is asserted to be the usage of the constitution in both countries. Of bills of attainder, the instances were certainly many, and most numerous in the worst times, and rising above each other in violence and injustice. The most tolerable of them was that which attainted the man who fled from justice, which gave him a day to appear, had he chosen to do so, and operated as a legislative outlawry. That kind of act had been passed, though but rarely, within the present century. There have been many acts of attainder when the party was willing but not permitted to appear and take his trial. In these two kinds of bills of attainder, however, it is to be observed, that they do not any violence to the common law, by the declaring of a new crime or a new punishment, but only by creating a new jurisdiction, and a new order of proceeding. Of the second kind that has been mentioned, many instances are to be found in the violent reigns of the Plantagenets and the Tudors, and

many of them revised by the wisdom of cooler and juster times. Of such unhappy monuments of human frailty, Lord Coke said, "*auferat oblivio, si non silentium tegat.*" I beg leave to differ in that from the learned Judge: I say, let the record upon which they are written be indelible and immortal: I say, let the memory that preserves them have a thousand tongues to tell them; and when justice, even late and slow, shall have robbed their fellow principle of life, let them be interred in a monument of negative instruction to posterity for ever.

A third kind of bill of attainder might be found, which for the first time declared the law, and attainted the criminal upon it; such was the attainder of Strafford. A fourth, which did not change the law as to the crime, but as to the evidence upon which it was to be proved; such was the attainder of Sir John Fenwick. Of these two last species of attainder, no lawyer has ever spoken with respect; they were the cruel effect of the rancour and injustice of party spirit; nor could any thing be said in their excuse, except that they were made for the direct punishment of the actual criminals, and whilst they were yet living. The only other attainder that remained possible to be added to this catalogue, was that of a bill like the present, which affects to try after the party's death, when trial is impossible; to punish guilt, when punishment is impossible; to inflict punishment where crime is not even pretended; change the settled law of property; to confiscate the widow's pittance! to plunder the orphan's cradle! and to violate the religion of the dead man's grave! For this, too, there was a precedent; but for the honour of humanity let it be remembered, that an *hundred and forty years* had elapsed in which that precedent had not been thought worthy of imitation in Great Britain:—he meant, he said, the attainder of the regicides; upon the Restoration, four of them were included in that bill of attainder, which was passed after their death.

Mr. Curran then adverted pretty much at large upon the circumstances of that period. A King restored, and by his nature disposed to mercy; a Ministry of uncommon wisdom, feeling that the salvation of the state could be secured only by mildness and conciliation; a bigoted, irritated, and interested faction in Parliament; the public mind in the highest state of division and agitation. For what, then, is that act of attainder resorted to as a precedent? surely it cannot be as a precedent of that servile paroxysm of simulated loyalty, with which the same men, who a few days be-

fore had shouted after the wheels of the good Protector, now raked out the grave of the traitorous usurper, and dragged his wretched carcass through the streets; that servile and simulated loyalty, which affected to bow in obsequious admiration of the salutary lenity which their vindictive folly was labouring to frustrate; that servile and interested hypocrisy, which gave a hollow and faithless support to the power of the monarch, utterly regardless alike of his character or his safety. That the example which this act of attainder held forth was never respected, appears from this, that it never has been followed in Great Britain, although that country has since that time been agitated by one revolution, and vexed by two rebellions. So far from extending forfeiture or attainder beyond the existing law, the opinion of that wise and reflecting country was gradually maturing into a dislike of the principle altogether; until at last, by the statutes of Anne and George the Second, she declares, that no forfeiture or attainder for treason should prejudice any other than the actual offender, nor work any injury to the heir or other person, after the death of a pretender to the throne. Why, said Mr. Curran, has Great Britain thus condemned the principle of forfeiture?—because she felt it to be unjust, and because she found it to be ineffectual.

Here Mr. Curran stated many reasons to prove the impolicy of severe penal laws. They have ever been found, he said, more to exasperate than to restrain: when the infliction is beyond the crime, the horror of the guilt is lost in the horror of the punishment; the sufferer becomes an object of commiseration; and the injustice of the state, of public odium. It was well observed, that in England the highwayman never murdered, because there the offender was not condemned to torture! but in France, where the offender was broken on the wheel, the traveller seldom or never escaped! what, then, is it in England that sends the traveller home with life, but the comparative mildness of English law? what but the merciless cruelty of the French law, that gives the atrocious aggravation of murder to robbery? the multiplication of penal laws lessens the value of life, and when you lessen the value of life, you lessen the fear of death. Look to the History of England upon this subject with respect to treason: notwithstanding all its formidable array of death, of Saxon forfeiture, and of feudal corruption of blood; in what country do you read of more treasons or of more rebellions? and why?—because these terrors do not

restrain the traitor. Beyond all other delinquents, he is likely to be a person of that ardent, enthusiastic, and intrepid spirit, that is roused into more decisive and desperate daring by the prospect of peril.

Mr. Yorke thinks the child of the traitor may be reclaimed to his loyalty by the restitution of his estate. Mr. Yorke perhaps might have reasoned better if he had looked to the still greater likelihood of making him a deadly enemy to the state, by the deadly ignominy inflicted on his father, and by the loss of his own inheritance. How keenly did Hannibal pursue his vengeance which he had sworn against Rome? how much more enthusiastically would he have pursued his purpose, had that oath been taken upon a father's grave? for the avenging of a father's sufferings! for the avenging of what he would have called a father's wrongs!

If I am called upon, said he, to give more reasons, why this precedent has not been for more than a century and a half repeated, I will say, that a bill of attainder is the result of an unnatural union of the legislative and judicial functions; in which the judicial has no law to restrain it; in which the legislative has no rule to guide it, unless passion and prejudice, which reject all rule and law, be called rule and law: it puts the lives and properties of men completely at the mercy of an arbitrary and despotic power.

Such were the acts of posthumous attainder in Ireland, in the reign of the arbitrary Elizabeth, who used these acts as a mere mode of robbing an Irish subject for the benefit of an English minion. Such was the act of the ninth of William III. not passed for the same odious and despicable purpose, but for a purpose equally arbitrary and unjust—the purpose of transferring the property of the country from persons professing one religion into the hands of those professing another, a purpose manifested and avowed by the remarkable clause in that act, which saves the inheritance to the heir of the traitor, provided that heir be a Protestant! nor so brutally tyrannical in its operation, in as much as it gave a right to traverse and a trial by jury to every person claiming a right, and protected the rights of infants, until they should be of age, and capable to assert those rights.

There were yet, Mr. Curran said, other reasons why that precedent of the regicides was not followed in Great Britain. A government that means honestly will appeal to the affection, not to the fears of the people. A state must be driven to the last gasp, when it is driven to seek protection in the

abandonment of the law, in that melancholy avowal of its weakness and its fear. Therefore it was not done in the rebellion of 1715, nor in that of 1745. He had hitherto, he said, abstained from adverting to the late transactions of Ireland; but he could not defraud his clients, or their cause, of so pregnant an example. In this country penal laws had been tried beyond any example of any former times: what was the event? the race between penalty and crime was continued, each growing fiercer in the conflict, until the penalty could go no further, and *the fugitive turned upon the breathless pursuer.*

From what a scene of wretchedness and horror have we escaped! But I do not wish to annoy you by the *stench of those unburied and unrotted* examples of the *havoc* and the *impotence of penal law* pushed to its extravagance. I am more pleased to turn your attention to the happy consequences of temperate conciliatory government of equal law. Compare the latter with the former, and let your wisdom decide between the tempest and the calm. I know it is a delicate subject, but let me presume to suggest what must be the impression upon this grieved and anxious country, if the rigour of the Parliament shall seem at war with the mildness of the Government, if the people shall have refuge in the mercy of the Crown from the rigour of their own representatives. But if at the same moment they shall see the convicted and the attainted secured in their lives and in their property by the wise lenity of the Crown, while the Parliament is visiting shame, and misery, and want, upon the *cradle of the unprotected infant*, who could not have offended—But I will not follow the idea, I will not see the inauspicious omen; I pray that heaven may avert it!

One topic more you will permit me to add. Every act of the sort ought to have a practical morality flowing from its principle.—If loyalty and justice require that these infants should be deprived of bread! must it not be a violation of that principle, to give them food or shelter? must not every loyal and just man wish to see them, in the words of the famous Golden Bull, “always poor and necessitous, and for ever accompanied by the infamy of their father, languishing in continued indigence, and finding their punishment in living, and their relief in dying?” If the widowed mother should carry the orphan heir of her unfortunate husband to the gate of any man who might feel himself touched with the sad vicissitudes of human affairs, who might feel a compassionate reverence for the noble blood that flowed

in his veins, *nobler than the royalty that first ennobled it*, that like a rich stream rose till it ran and hid its fountain:— If, remembering the many noble qualities of his unfortunate father, his heart melted over the calamities of the child; if his heart swelled, if his eyes overflowed, if his too precipitated hand was stretched out by his pity or his gratitude to the poor excommunicated sufferers, how could he justify the *rebel tear* or the *traitorous humanity*?

I shall trespass no longer upon the patience for which I am grateful;—one word only, and I have done. And that is, once more earnestly and solemnly to conjure you to reflect, that the fact—I mean the fact of guilt or innocence, which must be the foundation of this bill, is not now, after the death of the party, capable of being tried, consistently with the liberty of a free people, or the unalterable rules of eternal justice; and that as to the forfeiture and the ignominy which it enacts, that only can be punishment which lights upon guilt, and that can be only vengeance which breaks upon innocence!

COURT OF ROLLS IN IRELAND.

Decision

IN

MERRY *versus* POWER.

MARY POWER, in 1804, made her will, bequeathing a considerable part of her property to the Rev. John Power, and others, in trust for charitable purposes. Her brother, Joseph Merry, a merchant in Spain, was her next of kin, and residuary legatee; he died intestate, and his son, the now Plaintiff, came over and took out administration to his deceased father, and brought a suit in the Spiritual Court, to set aside the will, as unduly obtained, and as disposing of a large property to Papists, and for superstitious uses. In that Court the Plaintiff applied for an administrator, *pendente lite*, and was refused. The present bill, praying that the effects might be brought into Court, was filed only a few weeks; and now, before the Defendant had answered,

a motion was made by Dr. Vavasour, for a receiver, and that Dr. Power, the acting executor, should be ordered forthwith to bring the effects into Court; he relied on the affidavit of his client, the Plaintiff, charging that the will was obtained by fraud by the Defendant Power, and that at best it could not be sustained, as being a trust altogether for *popish uses*. The motion was opposed by Mr. Prendergast, who strongly argued against the imputations thrown out upon the conduct of Dr. Power, by the name of this "*one John Power, a popish priest*." He insisted, that under the whole circumstances, there was no colour for impeaching the transaction; that the bequests were most praiseworthy; that there had already been a decree of this Court, obtained by the trustees of charitable donations, affirming the legality of the trusts; and that it would be unprecedented for a Court to interfere in this way, before an answer came in, and without delay or resistance, on the part of the Defendant, to put in his answer.

His Honour the Master of the Rolls (Mr. Curran) said, that if the question had been brought forward upon the mere rule of the Court, he should not have thought it necessary to give many reasons for the order he intended to make; but pressed so strongly as it has been, both by the arguments themselves, and perhaps more so by the style and manner of putting them, as well as the supposed policy which has been called in to aid them:—

I think (said his Honour) I ought to state the grounds upon which I mean to act in my decision. First, then, it is urged, that this is the case of an insolvent and wasting executor, having fraudulently obtained the will. As to insolvency—to be an executor it is not necessary to be rich; integrity and discretion are the essential qualities of an executor. If the testator thinks he has found these in an executor of humble means, this Court has no power to control him; he may bestow his property as a gift to whom he pleases. It would be strange if he could not confide it as a trust to whom he chooses; I know of no necessary connexion between wealth and honesty;—I fear that integrity is not always found to be the parent or offspring of riches. To interfere, therefore, as is now sought, with this executor, would be little short of removing the will. But it is said this will has been obtained by fraud, practised by this "*one John Power*." No doubt this Court has acted, where strong ground of suspicion of fraud, and danger of the

property being made away with, have appeared ; but do these grounds now appear to this Court ?

Here his Honour recapitulated the facts sworn to, and said :—

I see no semblance of fact to sustain such a charge. Who does this “ *one John Power, a popish priest,*” turn out to be ? —I find he is a Catholic clergyman—a doctor in divinity, and the titular Bishop in the diocese of Waterford. And yet I am now pressed to believe that this gentleman has obtained this will by fraud. Every fact now appearing repels the charge ; I cannot but say, that the personal character of the person accused repels it still more strongly. Can I be brought, on grounds like those now before me, to believe that a man, having the education of a scholar, the habits of a religious life, and vested with so high a character in the ministry of the gospel, could be capable of so detestable a profanation as is flung upon him ?—Can I forget that he is a Christian Bishop, clothed not in the mere authority of a sect, but clothed in the indelible character of the episcopal order—suffering no diminution from his supposed heterodoxy, nor drawing any increase or confirmation from the merits of his conformity, should he think proper to renounce what we call the errors of faith ? Can I bring my mind on slight, or rather on no grounds, to believe, that he could so trample under his feet all the impressions of that education, of those habits, and of that high rank in the sacred ministry of the gospel, which he holds, as to sink to the odious impiety imputed to him ?—Can I bring myself to believe such a man, at the dying bed of his fellow-creature, would be capable with one hand of presenting the cross before her lifted eye, and with the other, of basely thieving from her those miserable dregs of this world, of which his perfidious tongue was employed in teaching her a Christian’s estimate ?—I do not believe it ; on the contrary, I am (as far as it belongs to me, in this interlocutory way, to judge of the fact) as perfectly convinced that the conduct of Dr. Power was what it ought to be, as I am that the testatrix is dead.

But (said his Honour) I am called on to interfere, it being a foolish bequest to superstitious, and those *popish* uses ! I have looked into those bequests—I find the object of them is to provide shelter and comfortable support for poor helpless females ; and clothes, and food, and instruction, for poor orphan children. Would to God I could see more frequent instances of such bequests ! Beautiful in the sight of God must it be—beautiful in the sight of man ought it be,

to see the dying Christian so employed—to see the last moments of human life so spent in acts of gratuitous benevolence, or even of interested expiation.—How can we behold such acts, without regarding them as forming a claim to, as springing from a consciousness of immortality? In all ages the hour of death has been considered as an interval of more than ordinary illumination; as if some rays from the light of the approaching world had found their way to the darkness of the parting spirit, and revealed to it an existence that could not terminate in the grave, but was to commence in death.

But these uses are condemned, as being not only superstitious but popish uses. As to that, I must say that I feel no disposition to give any assistance even to the orthodox rapine of the living, in defeating even the heterodox charity of the dead. I am aware that this objection means somewhat more than directly meets the ear, if it means anything. The objects of these bequests, it seems, are Catholics, or, as they have been called, *Papists*; and the insinuation clearly is, that the religion of the objects of this woman's bounty calls upon me to exercise some peculiar rigour of interference to abridge or defeat her intentions. Upon this point I wish to be distinctly understood—I don't conceive this to be the spirit of our existing law; nor, of course, the duty of this Court to act upon that principle in the way contended for. In times, thank God, now past, the laws would have warranted such doctrines. Those laws owed their existence to unfortunate combinations of circumstances that were thought to render them necessary. But if we look back with sorrow to their enactment, let us look forward with kindness and gratitude to their repeal. Produced by national calamity, they were brought by national benevolence, as well as by national contrition, to the altar of public justice and concord, and there offered as a sacrifice to atone, to heal, to conciliate, to restore social confidence, and to give us that hope of prosperity and safety, which no people ever had, or deserved, or dared to have, except where it is founded on the community of interests, a perfectly even and equal participation of just rights, and a consequent contribution of all the strength—of all the parts so equally interested in the defence of the whole.

I know they have been supposed to originate in religious bigotry—that is, religious zeal carried to excess—I never thought so. The real spirit of our holy religion is too incorruptibly pure and beneficent to be depraved into any

such excess. Analyze the bigot's object, and we see he takes nothing from religion but a flimsy pretext in the profanation of its name; he professes the correction of error and the propagation of truth. But when he has gained the victory, what are the terms he makes for himself? Power and profit. What terms does he make for religion? Profession and conformity.—What is that profession? The mere utterance of the lips—the utterance of sounds, that after a pulsation or two upon the air, are just as visible and lasting as they are audible. What is the conformity? Is it the practice of any social virtue or Christian duty? Is it the forgiveness of injuries, or the payment of debts, or the practice of charity? No such things. It is the performance of some bodily gesture or attitude. It is going to some place of worship. It is to stand or to kneel, or to bow to the poor-box. But it is not a conformity that has any thing to do with the judgment, or the heart, or the conduct. All these things bigotry meddles not with, but leaves them to religion herself to perform. Bigotry only adds one more, and that a very odious one, to the number of those human stains which it is the business of true religion not to burn out with the bigot's fire, but to expunge and wash away by the Christian's tears.—Such, invariably, in all the countries and ages, have been the motives to the bigot's conflicts, and such the use of his victories: not the propagation of any opinion, but the engrossment of power and plunder—of homage and tribute. Such, I much fear, was the real origin of our popery laws.—But power and privilege must necessarily be confined to very few. In hostile armies you find them pretty equal, the victors and the vanquished, in the numbers of their hospitals and in the numbers of their dead; so it is with nations; the great mass is despoiled and degraded, but the spoil itself is confined to few indeed. The result finally can be nothing but the disease of dropsy and decrepitude. In Ireland this was peculiarly the case. Religion was dishonoured, man was degraded, and social affection was almost extinguished. A few, a very few still profited by this abasement of humanity. But let it be remembered, with a just feeling of grateful respect to their patriotic and disinterested virtue—and it is for this purpose that I have alluded as I have done—that *that* few composed the whole power of the legislature which concurred in the repeal of that system, and left remaining of it, not an edifice to be demolished, but a mere heap of rubbish, unsightly, perhaps pernicious—to be carted away.

If the repeal of those laws had been a mere abjuration of intolerance, I should have given it little credit. The growing knowledge of the world, particularly of the sister nation, had disclosed and unmasked intolerance; had put it to shame, and consequently to flight!—But though public opinion may proscribe intolerance, it cannot take away powers or privileges established by law. Those powers of exclusion and monopoly could be given up only by the generous relinquishment of those who possessed them. And nobly were they so relinquished by those repealing statutes. Those lovers of their country saw the public necessity of the sacrifice, and most disinterestedly did they make it. If, too, they have been singular in this virtue, they have been as singularly fortunate in their reward. In general, the legislator, though he sows the seed of public good, is himself numbered with the dead before the harvest can be gathered. With us it has not been so—with us the public benefactors, many of them, at least, have lived to see the blessing of heaven upon their virtue, in an uniformly accelerating progress of industry, and comfort, and liberality, and social affection, and common interest, such as I do not believe that any age or nation has ever witnessed.

Such I do know was the view, and such the hope, with which that legislature, *now no more!* proceeded so far as they went, in the repeal of those laws so repealed. And well do I know how warmly it is now remembered by every thinking Catholic, that not a single voice for those repeals was or could be given except by a Protestant legislator. With infinite pleasure do I also know and feel, that the same sense of justice and good-will which then produced the repeal of those laws, is continuing to act, and with increasing energy, upon those persons in both countries, whose worth and whose wisdom are likely to explode whatever principle is dictated by bigotry and folly; and to give currency and action to whatever principle is wise and salutary. Such, also, I know to be the feelings of every Court in this hall. It is from this enlarged and humanized spirit of legislation, that Courts of Justice ought to take their principles of expounding the law.

At another time I should probably have deemed it right to preserve a more respectful distance from some subjects which I have presumed (but certainly with the best intentions, and I hope no unbecoming freedom) to approach:—but I see the interest the question has excited; and I think it right to let no person carry away with him any mistake,

as to the grounds of my decision, or suppose that it is either the duty or the disposition of our Courts to make any harsh or jealous distinctions in their judgment, founded on any differences of religious sects or tenets. I think, therefore, the motion ought to be refused; and I think myself bound to mark still more strongly my sense of its impropriety, by refusing it with full costs.

ELECTION SPEECH,

AT NEWRY.

ON October 17, 1812, being the sixth day of the poll, Mr. Curran most eloquently spoke to the following effect:—

He said, he had been induced by some of the most respectable electors of the borough to offer himself a candidate. As to himself, he could have no wish to add to the weight of his public duties; and as to serving the country essentially, he thought very moderately indeed of his own powers: but under circumstances like the present, under such rulers, and in such a state of popular representation, or, rather, misrepresentation, he was perfectly convinced that no force of any individual, or even of many joined together, could do much to serve us, or to save us. In addition to personal disinclination, he was ignorant of the exact state of the borough, and, of course, of the likelihood of his success; but yet, though without personal wish or probable hope, he thought himself bound, as a public man, to obey; because, though the victory was doubtful, the value of the contest was incalculable, in as much as it must bring before themselves, and before the rest of Ireland, not only an exact picture of their situation, and of the public malady under which they were sinking, but must also make an infallible experiment; it must decide, to the commonest observer, the principle of the disease—the weakness and misery of public distraction—the certain success, if the sufferers could be combined by the sense of common danger, in a common effort, to throw off the odious incubus that sits upon the public heart, locking up the wholesome circulation of its blood, and paralysing its action. The experiment has now been made, and has failed of immediate success; it was an

effort nobly supported by every generous and honest man within the limits of the borough; but its triumph has been delayed by the want of union—by the apostacy of the perfidious—by the vile defection of others, whom opulence could not reconcile to duty and independence. Yet, said Mr. Curran, notwithstanding this sad coalition of miserable men against themselves and their children, I do not hesitate to announce to the generous and honest electors who hear me, that though their triumph is deferred, their borough is from this moment free, and that terror has ceased to reign over it—you have polled a greater number of honest and independent voters than ever appeared heretofore for your most successful candidate.

Look now, for a moment, against what a torrent of adverse circumstances you had to act. The object of your support, personally a stranger, giving public notice that he would not solicit a single individual; the moment a contest was apprehended, corruption took the alarm,—and a public officer, in my opinion most unbecomingly, appointed so early a day for the election, as to make all preparation whatsoever on my part impossible. If you remember the indignant laugh that was excited in the course of the poll, when the returning officer demanded of the poll-taker how many had voted for the Master of the Rolls, and how many “*for us!*” you must, I think, be satisfied that there must be something base in this business. Sad, indeed, is the detail of this odious and ludicrous transaction, but it is too instructive to be passed over in silence.

When the election opened, an old gentleman rose, and proposed my gallant opponent, as being a gentleman of “*great influence in the borough,*” and who had “*served it*” for three parliaments—that is, in other words, a gentleman who had the dregs of its population under his feet, and who had, for three parliaments, been the faithful adherent of every minister; and, upon every vital question, the steady and remorseless enemy, so far as a dumb vote would go, of this devoted island. And, indeed, what could you expect from a gentleman of another country, who could have neither interest *in* you, nor sympathy *for* you, but was perfectly free to sell you, or to bestow you, at his pleasure? This motion was seconded—I blush to think of it, I burn at being obliged to state it—by a merchant of Newry, himself a Catholic, himself the uniform victim, as he, together with his Catholic brethren, had been the uniform victims of the principles of a gentleman whom he thought proper to support.

Never shall I forget the figure which the unhappy man made ; hesitating, stammering, making a poor endeavour to look angry, as if anger could cast any veil over conscious guilt, or conscious shame, or conscious fear ; and to what extent must he have felt all those sensations, if he looked forward—not merely to the sentiment of indignation and contempt which he was exciting in the minds of those that he betrayed, but the internal horror that he must feel, when thrust forward to the bar of his own conscience, and the dreadful sentence of expiatory torture which that indignant conscience must pronounce upon him ? However, he was bold enough to second the motion ; and I think the General is altogether indebted to the virtue of this independent Catholic, and of two other equally virtuous Catholics of Newry, for his final success, if success it can be called.

Having passed on to the circumstances of the test proposed to his opponent, which, said Mr. Curran, was the most moderate ever witnessed—it was merely that he would not obstinately persevere in betraying the trust reposed in him—what was his answer ? Certainly it was fair and candid, and giving you all the fullest notice of what you had to expect ;—he said, that he was not an orator ; that his principles were those of a soldier ; and that whatever question came forward, he would vote as he should think best ; that is, in other words, if you returned him, you would send him a mute to Parliament, with a parchment in one hand, under the name of a return, containing the *terms* of your capitulation, and a bow-string in the other ;—during the debate he would ring the dumb bell ; but, on the division,—

“ When it became a passing bell,
“ O ! then he’d sing it passing well.”

Indeed, to touch but passingly upon the subsequent transactions of the election, they are fresh in your minds. You saw those who voted *for* their country ; you saw those who voted *against* their country, and against *themselves*. Every honourable, every respectable man, within your borough, except the unfortunate Mr. Caulfield, and his two associates, were in the former class ;—but why do I except them ? They do not belong to that class of public spirit or honour ; you saw the class to which these unfortunate men properly belong. You saw a succession of poor creatures, without clothes upon their backs—naked, as if they had been stripped for execution—naked, as if they had been landed from their mothers, consigned to the Noble General at the

moment of their birth—no part of them covered but their chins, as if nature had stuck a beard upon them in derision of their destiny. Such has been the contest—such the adverse forces—such, too, thus far, the result. But I told you that the contest was of more value than the victory; that if it did not give you triumph, it would give you wisdom; and to keep this promise, I must carry back your reflections to times that have passed us; and I must do that to show you that all our miseries and degradation have sprung from a disunion, cruelly and artfully fabricated by a foreign country, for the base purpose of driving us to suicide, and making us the instrument of our own destruction.

Mr. Curran here rapidly sketched the first dawn of dissension in Ireland—the conqueror and the conquered—a conquest, too, obtained, like all the victories over Ireland, by the triumph of guilt over innocence—this dissension followed up by the natural hatred of the spoiler and the despoiled; followed up further by the absurd antipathies of religious sects; and still further followed by the rivalries of trade—the cruel tyrants of Ireland dreading, that, if Irish industry had not her hands tied behind her back, she might become impatient of servitude, and those hands might work her deliverance. To this growing accumulation of Irish dissension, the miserable James the Second—his heart rotted by the depravity of that France which had given him an interested shelter from the just indignation of his betrayed subjects—put the last hand; and an additional dissension, calling itself political, as well as religious, was superadded. Under this sad coalition of confederating dissensions, nursed and fomented by the policy of England, this devoted country has continued to languish, with small fluctuations of national destiny, from the invasion of the Second Henry, to the present time. And here let me be just while I am indignant; let me candidly own, to the noble examples of British virtue, to the splendid exertions of British courage, to their splendid sacrifices, am I probably indebted for my feelings as an Irishman, and my devotion to my country. They thought it madness to trust themselves to the influence of any foreign country; they thought the circulation of the political blood could be carried on only by the action of the heart within the body, and could not be maintained from without; events have shown you that what they thought was just, and that what they did was indispensable;—they thought they ought to govern themselves—they thought that at every hazard they ought to make the effort—they thought it more eligible.

to perish than to fail—and to the God of heaven I pray, that the authority of so splendid an example may not be lost upon Ireland!

Mr. Curran, in adverting to the state of Ireland, from the Revolution to the year 1782, called her a sad continuing spectacle of disgrace, and oppression, and plunder, which she was too enfeebled by dissension to resist; because she was the abject, sad, helpless victim of the sordid, insatiable, and implacable tyranny of a foreign country. At length, in 1782, a noble effort was made—and deathless ought to be the name of him* that made it, and deathless ought to be the gratitude of the country for which it was made—the independence of Ireland was acknowledged. Under this system of asserted independence, our progress in prosperity was much more rapid than could have been expected, when we remember the conduct of a very leading noble person upon that occasion. Never was a more generous mind, or a purer heart; but his mind had more purity than strength: he had all that belonged to taste, and courtesy, and refinement; but the grand and the sublime of national reform were composed of colours too strong for his eye, and comprised an horizon too outstretched for his vision. The Catholics of Ireland were in fact excluded from the asserted independence of their country. Thus far the result comes to this, that wherever perfect union is not found, complete redress must be sought in vain.

Mr. Curran, in observing on the Union, called it the last and mortal blow to the existence of Ireland as a nation;—a consummation of our destruction, achieved by that perpetual instrument of our ruin, our own dissensions. The whole history of mankind records no instance of any hostile cabinet, perhaps of any, even, internal cabinet, destitute of all principles of honour or of shame. The Irish Catholic was taught to believe, that if he surrendered his country, he would cease to be a slave. The Irish Protestant was cajoled into the belief, that if he concurred in the surrender, he would be placed upon the neck of an hostile faction—wretched dupe! You might as well persuade the gaoler, that he is less a prisoner than the captives he locks up, merely because he carries the key of the prison in his pocket. By that reciprocal animosity, however, Ireland was surrendered—the guilt of the surrender was most atrocious—the consequences of the crime most tremendous, and exemplary. We put ourselves into a condition of the most

* Mr. Grattan.

unqualified servitude—we sold our country, and we levied upon ourselves the price of the purchase—we gave up the right of disposing of our properties—we yielded to a foreign legislature to decide, whether the funds necessary to their projects or their profligacy should be extracted from us, or be furnished by themselves;—the consequence has been, our scanty means have been squandered in her internal corruption, as profusely as our best blood has been wasted in the madness of her aggressions, or the feeble folly of her resistance—our debt has accordingly been increased more than ten-fold—the common comforts of life have been vanishing—we are sinking into beggary—our poor people have been worried by cruel and unprincipled prosecutions—and the instruments of our government have been almost simplified into the tax-gatherer and the hangman. At length, after this long night of suffering, the morning-star of our redemption cast its light upon us—the mist was dissolved, and all men perceived that those whom they had been blindly attacking in the dark, were, in reality, their fellow-sufferers and their friends; we have made a discovery of the grand principle in politics, that the tyrant is in every instance the creature of the slave—that he is a cowardly and a computing animal—and that, in every instance, he calculates between the expenditure to be made, and the advantage to be acquired. I therefore do not hesitate to say, that if the wretched Island of Man, that *refugium peccatorum*, had sense and spirit to see the force of this truth, she could not be enslaved by the whole power of England; the oppressor would see that the necessary expenditure in whips, and chains, and gibbets, would infinitely countervail the ultimate value of the acquisition; and it is owing to the ignorance of this unquestionable truth, that so much of this agitated globe has, in all ages, been crawled over by a Manks population. This discovery, at last, Ireland has made—the Catholic claimed his rights—the Protestant generously and nobly felt as he ought, and seconded the claim—a silly government was driven to the despicable courage of cowardice, and resorted to the odious artillery of prosecutions; the expedient failed; the question made its way to the discussion of the senate. I will not tire you with a detail—an House of Commons, who at least represented *themselves*, perhaps afraid, perhaps ashamed of their employers, became unmanageable tools in the hands of such awkward artists, and were dissolved; just as a beaten gamester throws the cards into the fire, in hopes in a new pack to find better fortune.

Gentlemen, I was well aware at my rising, that you expected nothing like amusement from what I had to say—that my duty was to tell you plain and important truths—to lay before you, without exaggeration or reserve, a fair statement of the causes that have acted upon the national fortune—of the causes that have put you down, and that may raise you up; to possess you with a fair idea of your present position—of what you have to fear—of what you have to hope—and how you ought to act. When I speak of your present position, I would not have you suppose that I mean the actual situation of the borough of Newry; or that I think it much worth while to dwell upon the foolish insolence with which a besotted cabinet has thought fit to insult you, by sending a stranger to your country and your interests, to obtain a momentary victory over your integrity, by means, of which none of you are ignorant.

[Here Mr. Bell, an agent in opposition to Mr. Curran, stood up, and fixed his eyes upon the Master of the Rolls, with a very peculiar expression of countenance].

Mr. Seneschal, said Mr. Curran, I demand of you, as returning-officer, that I, a candidate, shall be protected, as you are in duty bound to do, from being disturbed by the obscene and unnatural grimaces of a baboon.

[Mr. Jebb, the Counsel for the Seneschal, immediately interposed, and ordered Mr. Bell to sit down].

Mr. Curran resumed—I do not wonder, said he, at having provoked interruption, when I spoke of your borough—I told you that from this moment it is free. Never in my life have I so felt the spirit of the people, as among you—never have I so felt the throbs of returning life—I almost forgot my own habitual estimate of my own small importance—I almost thought it was owing to some energy within myself, when I was lifted and borne on upon the buoyant surge of popular sympathy and enthusiasm. I therefore again repeat it—it is the moment of your new birth unto righteousness—your proved friends are high among you—your developed enemies are expunged for ever—your liberty has been taken from the grave, and if she is put back into the tomb, it can be only by your own parricide, and she must be buried alive.

I have to add, for your satisfaction, a statement has been laid before me of the grossest bribery, which will be proved, beyond all doubt, and make the return a nullity. I have also received a statement of evidence to show, that more than one third of those who voted against us, had been

trained by bribe and terror into perjury, when they swore to the value of their qualifications. Some of those houses had actually no existence whatsoever: they might as well have voted from their pasture to give their suffrage; and Nebuchadnezzar, in the last year of his feeding on grass, would have been as competent as they were to vote in Ireland. But I enlarge not upon this topic—to touch upon it is enough for the present; the detail must be reserved for a future occasion, and another place; it belongs only to the hopeless to be angry; do not you, therefore, be angry, where you cannot be surprised. You have been insulted, and oppressed, and betrayed; but what better could you hope from such a ministry as their own nation is cursed withal; they hear the voice of suffering England now thundering in their ears; they feel they cannot retain—they are anxious to destroy—they are acting upon the principle of Russian retreat. Pressed upon by the people, and beaten back into their fastnesses, they depopulate as they retire: but what better could you have ever hoped from such men; a motley group, without virtue, or character, or talent; the sort of cabinet that you have laughed at on the stage, where the “potent, grave, and reverend signiors” were composed of scene-shifters, and candle-snuffers, robed in old curtains, and wigged from the stores of the theatre? They affected to profess religious distinctions, but they were too grossly ignorant to conceive any such. There is no science in which a man must not know something to qualify him for misconception. I have myself talked with Englishmen upon this subject: you cannot suppose me to allude to the exalted class of persons in that country, who have done themselves so much honour by their sympathy and liberality; I speak of an inferior order—indeed of persons like your Ministers here—I have asked them, what they could find so formidable in the religious principles of the Irish Catholics? and the answer has uniformly been, “*Why, sir, I never know’d nothink at all of the principles of the Irish Papists, except their lank hair, and long coats, without no arms in the sleeves; and I thinks the most liberal man will allow, that them there are dangerous principles!*”

Shall I, my friends, say one serious word to you upon this serious subject? Patriotism is of no one religion; Christianity belongs exclusively to no sect; and moral virtue and social duty are taught with equal exactness by every sect, and practised with equal imperfection by all; and therefore, wherever you find a little interested bustling bigot, do not

hate him—do not imitate him—pity him, if you can. I scarcely wish you not to laugh when you look at one of these pearl-divers in theology; his head barely under water, his eyes shut, and an index floating behind him, displaying the precise degree of his purity and his depth. A word or two, said he, upon your actual position; and what upon that subject but a word of sadness—the monumental inscription upon the head-stone of our grave? all semblance of national independence buried in that grave in which our legislature is interred—our property and our persons are disposed of by laws made in another clime, and made like boots and shoes for exportation, to fit the wearers as they may. If you were now to consult my learned friend here, and ask him how much of your property belongs to yourself, or for what crime you may be whipped, or hanged, or transported—his answer would be, “It is impossible, sir, to tell you now; but I am told that the packet is in the Bay.” It was, in fact, the real design of a rash, and arbitrary, and short-sighted projector, at once to deprive you of all power, as to your own taxation, and of another power of not very inferior importance, and which, indeed, is inseparably connected with taxation—to rob you of all influence upon the vital question of peace or war; and to bring all within the control of an English Minister. This very power, thus acquired by that detested Union, has been a mill-stone about the neck of England. From that hour to this she has been flaring away in her ruinous and wasteful war—her allies no more—her enemies multiplied—her finances reduced to rags—her people depressed and discontented—her artisans reduced to the last ebb, and their discontents methodised into the most terrific combinations—her labourers without employment—her manufactures without a market. The last entrance in the North, to which they could have looked, being now shut against them, and fastened by a bar that has been reddened in the flames of Moscow. But this, gentlemen, is a picture too heart-rending to dilate upon: you cannot but know it already; and I do not wish to anticipate the direful consequences by which you are too probably destined to feel it further to the quick. I find it a sort of refuge to pass to the next topic which I mentioned as calling for your attention, namely, what foundation, what ground we had for hope.

Mr. Curran ably and touchingly described the noble and disinterested patriotism which led the Protestants of Ireland to ally themselves, offensively and defensively, with their

afflicted oppressed Catholic countrymen. Without the aid of its rank, its intellect, and its property, Ireland could do no more for herself now than she has done for centuries heretofore, when she lay a helpless hulk upon the water: but now, for the first time, we are indebted to Protestant spirit, for the delicious spectacle of seeing her at length equipped with masts, and sails, and compass, and helm; at length she is sea-worthy. Whether she is to escape the tempest or gain the port, is an event to be disposed of by the great Ruler of the waters and the winds.—If our voyage be prosperous, our success will be doubled by our unanimity; but even if we are doomed to sink, we shall sink with honour;—but, said Mr. Curran, am I over sanguine in counting our Protestant allies?—your own country gives you a cheering instance in a Noble Marquis, retiring from the dissipation of an English Court, making his country his residence, and giving his first entrance into manhood to the cause of Ireland. It is not from any association of place that my mind is turned to the name of Moira; to name him, is to recognise what your idolatry has given to him for so many years; but a late transaction calls for a word or two. I thought anxiously upon it at the time, and, from that time to this, if he required to be raised, he must have been raised in public opinion by the event of that negociation. He saw that the public in either country could not have any hope from an arrangement in which the first preliminary was a selfish scramble for patronage, that must have ended in a scramble for power—in which the first efforts of patriotism were for the reformation of water-closets, and the surrender of mop-sticks in the Palace—to sink the head and to irritate the man that wore the crown, instead of making their first measure a restitution of representation to the people, who, if they were as strong as they ought to be, could have nothing to dread from the tinsel of a robe, or the gilding of a sceptre! Let me pass to another splendid accession to our force, in the noble conduct of our rising youth in the election of our University. With what tenderness and admiration must the eye dwell upon the exalted band of young men, the rosy blush of opening life glowing upon their cheeks, advancing in patriotic procession, bringing the first fruits of unfolding virtue—a sacred offering on the altar of their country—and conducted by a priest, in every point worthy of the votaries and of the offering. The choice which they have made of a man of such tried public virtue, and such transcendent talents as Mr. Plunket, is a proof of their early proficiency

in sense and virtue. If Mr. Plunket had been sent alone, as the representative of his country, and was not accompanied by the illustrious Henry Grattan, I should hesitate to say of him, what the historian said of Gylippus, when he was sent alone as a military reinforcement to a distressed ally, who had applied for aid to Sparta:—Gylippus alone (says the writer) was sent, in whom was concentrated all the energies and all the talents of his country.—“*Mittitur Gylippus solus in quo omnium instar Lacedæmoniorum erat.*”—I have thought it better to quote the words of the writer, as being probably more familiar to the learned supporters of my gallant opponent, than my translation.—It is only due to justice, that upon this subject I add, with whatsoever regret, another word; it would not be candid if I left it possible for you to suspect, that my attestation could have been dictated by mere private attachment, instead of being measured by the most impartial judgment. Little remains for me to add, to what I have already said. I said you should consider how you ought to act, I will give you my humble idea upon that point:—do not exhaust the resources of your spirit, by idle anger or idle disgust; forgive those that have voted against you here—they will not forgive themselves. I understand they are to be packed up in tumbrils, with layers of salt between them, and carted to the election for the county, to appear again in patriotic support of the noble projector of the glories of Walcheren—do not envy him the precious cargo of the raw materials of virtuous legislation; be assured all this is of use. Let me remind you, before I go, of that precept, equally profound and beneficent, which the meek and modest Author of our blessed religion left to the world:—“And one command I give you, that you love one another.” Be assured, that of this love the true spirit can be no other than probity and honour; the great analogies of the moral and the physical world, are surprisingly coincident—you cannot glue two pieces of board together, unless the joint be clean—you cannot unite two men together, unless the cement be virtue; for vice can give no sanction to compact, she can form no bond of affection.

And now, my friends, I bid you adieu, with a feeling at my heart that can never leave it, and which my tongue cannot attempt the abortive effort of expressing. If my death do not prevent it, we shall meet again in this place. If you feel as kindly to me as I do to you, relinquish the attestation which I know you had reserved for my departure. Our enemy has, I think, received the mortal blow, but, though

he reels, he has not fallen; and we have seen too much, on a greater scale, of the wretchedness of anticipated triumph. Let me therefore retire from among you, in the way that becomes me, and becomes you—uncheered by a single voice, and unaccompanied by a single man.—May the blessing of God preserve you in the affection of one another!

* * * *This Speech is now introduced into a Collection for the first time.*

SPEECHES,

SPECIAL COMMISSION, DUBLIN, JULY, 1798;

ON BEHALF OF

HENRY & JOHN SHEARES.

High Treason.

* * * *Some occurrences upon this important Trial are here narrated, for which the reader will perceive the great interest of the case, and Mr. Curran's allusion to them, are ample apology.—These Speeches in Defence of the Sheareses, are now for the first time collected.*

On Wednesday, the 4th of July, 1798, Henry Sheares, Esquire, and John Sheares, Esquire, brothers, were arraigned on an indictment charging them with contriving to overturn the Government of the kingdom of Ireland, to depose and deprive and put the King to death, by traitorously meeting and conspiring with others to levy rebellion and war in Ireland, and to procure arms and armed men for that purpose. Various overt acts were set forth, with an additional one, that they became members of a society of United Irishmen, for the purpose of aiding and assisting the French.

Clerk of the Crown.—How say you, Henry Sheares, are you guilty of this treason in manner and form, as you stand indicted and arraigned, or not?

Mr. M'Nally.—My Lords, I must entreat your Lordships will indulge the Prisoners with some little time, as their Counsel are not yet come into Court.

Lord Carleton.—If any application be intended to be made to put off their trial, it cannot be made until after the Prisoners have pleaded.

Mr. M'Nally.—My Lords, there is a deliberation among the Counsel upon a serious point of law; and until they come in, I cannot give an answer, or determine upon the line of conduct to be pursued.

Lord Carleton.—If there be any ground of demurrer to the indictment, you may file a demurrer. It is the duty of Counsel assigned to attend the Court at the hour appointed for its sitting. It is now one hour after the time appointed by the adjournment. If there be any objection which can be taken in this stage of the proceedings, let it be made by the Counsel who do attend.

Mr. M'Nally.—It is not an objection in the form of a plea or a demurrer.

Lord Carleton.—Then in what way can it come?

Mr. M'Nally.—My Lord, if a single hint be mentioned, it may defeat the purpose of the objection. I wish to wait the appearance of the other Counsel.

Lord Carleton.—According to my understanding, there are but three ways in which objections to an indictment can be made—by plea, or demurrer, or a motion to quash the indictment. You mention, that your objection is neither in the form of a plea or demurrer.

Mr. M'Nally.—My Lord, it will come in the form of a motion to quash the indictment.

Lord Carleton.—Then it is not necessary to wait for the other Counsel; because I take it to be settled law, that the Court will not quash indictments upon motion on behalf of the Prisoner in cases of this kind; because, though every count, or every overt act in the indictment, but one, be bad, yet that one will be sufficient to maintain the indictment.

Mr. M'Nally.—Suppose my Lord, that the point went to show, that the whole proceedings were *coram non judice*?

Lord Carleton.—Then go on, and show it.

Mr. M'Nally.—My Lord, I would rather wait to consult with the other Counsel. I have intimated to them what struck me upon the subject. I have not made up my mind upon it; nor can I, until I converse with them.

[Here a delay of half an hour occurred, after which the Court said, the cause must go on.]

The Clerk of the Crown then asked the Prisoner Henry Sheares, whether he was guilty or not?

Mr. M'Nally.—My Lords, I will state what I humbly conceive to be sufficient ground to quash the whole of the proceedings against these gentlemen, and every part thereof, except the King's Commission. My Lords, it is very lately that the point has occurred; but it is so plain in itself, that it will require very little ability to state, or enforce it.—I take it, my Lords, to be an undeniable principle of law, that an alien cannot be a party, either as a Grand Juror,

or a Petty Juror, or in any light, but as a witness for the Crown, in cases of High Treason. My Lords, the fact is, as I am instructed, there has been an alien, a French man born, a prisoner at one part of his life, and never naturalized, called upon the Grand Jury to find a bill of indictment against the Prisoners. When your Lordships read the caption of the indictment, you will find the name John Decluzeau among the Grand Jury. It may be said, and I anticipate the objection, that this objection should have come by way of challenge. No doubt, a challenge would have set him aside. But the act of the Court is the act of the law, and will not be allowed to injure a man, any more than the act of God. The Grand Panel was called over in the absence of the Prisoners; they had no Counsel assigned them at that time. If any man had arose and suggested publicly a challenge against the Crown, he would be guilty of a contempt: so it is laid down in the State Trials.—Alienage, then, being a good cause of challenge, the question is, Does it come too late?—I say, the Prisoners were ignorant of the persons summoned; they were not present when the Grand Jury were sworn, and therefore they lost the benefit of challenge, not by their own default. The law gives a foreigner the privilege of having a Jury *de medietate linguæ*; six aliens, and six natives: but how is it in treason?—Lord Coke says, and he has never been contradicted, that privilege is not allowed in treason, because a foreigner is not a judge of the allegiance due from a subject to the Crown of these realms. The deduction is, that if a foreigner shall not have that privilege, the native shall not have a foreigner upon his Jury. In Hawk. c. 43, s. 34, tit. “Challenge,” two statutes are mentioned, 28 Ed. 3, and 9 Hen. 6, both previous to the 10 Hen. 7, which makes the statute law of England antecedent to that time of force in Ireland;—these statutes, and some others subsequent in point of time, direct Juries to be formed of aliens and denizens in particular instances, as where it was presumed the native might be biassed against the alien. The conclusion furnished by these laws is, that as in particular cases, by statute, an alien may be upon a Jury, at common law he could not; for if he could at common law, where would be the necessity of these statutes giving a special privilege?—Therefore, I contend, that the proceedings in this case are *coram non judice*; because, if the bill of indictment be found by a Grand Jury, upon which there was any one man not answering the description in the caption, “good and lawful men,” competent to find the bill against a subject of the Irish Crown, it is void; and if I do not come too late, I come with force completely sufficient to set aside the proceedings of the Jury.

I am aware, my Lords, that this matter does not appear upon the record, because the name only appears; therefore it cannot operate as error, or in arrest of judgment. Upon this account, I considered it my duty to communicate this objection to the gentlemen who act with me, and who, I regret, do not yet appear. I have faithfully stated the law, as it occurred to me; and I have only one observa-

tion to make, that so recently did the objection present itself, that I am not prepared to say in what way the fact is to be established, should the Court be of opinion that the objection is good. If a challenge had been taken, we know how it could be disposed of; but being deprived of that, as I have already stated, I am at a loss to know how the fact is to be inquired into—whether by collateral issue, or otherwise. I am not ashamed to own my ignorance in this respect.—Perhaps it may come in the shape of a plea, to which the Counsel for the Crown may demur.

After some objection by the Court, it waited for the plea to be engrossed; and in the interval Mr. Curran and Mr. Plunket came into Court, and apologized for their absence, saying, they were informed that the Court would not sit till eleven o'clock.—Lord Carleton said, the Counsel had been misinformed; for the Judges, upon the former day, expressly mentioned their intention of sitting at half past nine.

The plea being filed, stated, that the Prisoners ought not to be compelled to answer to the said indictment, because they say, that John Decluzeau, in the caption of the said indictment mentioned, was born in the kingdom of France, and is an alien, and is not a natural born and liege subject.

A replication being filed on behalf of the Crown,—

Mr. Curran said,—My Lords, we have looked over this replication, and we find that the gentlemen concerned for the Crown have thought proper to plead in three ways. The subject matter of our plea in abatement came very recently to our knowledge. To suppose that an alien had been upon the Grand Jury finding a bill of indictment involving the duty of allegiance was a rare thing—the suspicion of it came late to our knowledge. It would have been our duty to be prepared, had we known it in time; but as we did not, and as it is a plea of great novelty, we hope the Court will not think it unreasonable to give us time till to-morrow to answer this pleading.

The Court over-ruled the application.

Mr. Curran.—My Lords, before we rejoin, it may be prudent to consider, whether this replication should not be *quashed*. There are three distinct matters in the replication, and they are repugnant to one another. One is, that the Juror is *not an alien*—the second and third contain averments that he *is an alien*. Clearly, in civil cases, a party cannot plead double matter, without the leave of the Court; even the statute which gives that benefit, does not admit it without a special motion, in order that the Court may see whether the pleas can stand together. But even that holds only in civil cases, and by the authority of an act of Parlia-

ment. Therefore your Lordships will consider, whether a replication of this kind, consisting of three parts, contradictory and repugnant, ought to be answered.

Lord Carleton.—In civil cases, certainly, the right of pleading double arises from the act of Parliament.—As to the objection you now make, you must avail yourself of it in some other way. We will not quash the replication upon motion.

A rejoinder and demurrer of insufficiency were then filed on the part of the Prisoners.

Mr. Curran.—My Lords, it is my duty to suggest such reasons as occur to me in support of the demurrer filed here on the part of the Prisoners.—My Lords, the law of this country has declared, that in order to the conviction of any man, not only of any charge of the higher species of criminal offences, but of any criminal charge whatsoever, he must be convicted upon the finding of two Juries; first of the Grand Jury, who determine upon the guilt in one point of view; and, secondly, by the corroborative finding of the Petty Jury, who establish that guilt in a more direct manner: and it is the law of this country, that the Jurors who shall so find, whether upon the grand, or whether upon the petty inquest, shall be *probi et legales homines omni exceptione majores*. They must be open to no legal objection of personal incompetence; they must be capable of having freehold property; and in order to have freehold property, they must not be open to the objection of being born under the jurisdiction of a foreign prince, or owing allegiance to any foreign power. Because the law of this country, and indeed the law of every country in Europe, has thought it an indispensable precaution, to trust no man with the weight or influence which territorial possession may give him, contrary to that allegiance which ought to flow from every man having property in the country. This observation is emphatically forcible in every branch of the criminal law; but in the law of treason, it has a degree of force and cogency that fails in every inferior class of offence; because the very point to be inquired into in treason, is the nature of allegiance.—The general nature of allegiance may be pretty clear to every man. Every man, however unlearned he may be, can easily acquire such a notion of allegiance, whether natural and born with him, or whether it be temporary and contracted by emigration into another country—he may acquire a vague, untechnical idea of allegiance, for his immediate personal conduct. But I am warranted in saying, that the constitution does not suppose, that any

foreigner has any direct idea of allegiance, but what he owes to his original prince. The constitution supposes and takes for granted, that no foreigner has such an idea of our peculiar and precise allegiance, as qualifies him to act as a Juror, where that is the question to be inquired into; and I found myself upon this known principle, that though the benignity of the English law has in many cases, where strangers are tried, given a Jury half composed of foreigners and half natives, that benefit is denied to any man accused of treason, for the reason I have stated; because, says Sir W. Blackstone, "aliens are very improper judges of the breach of allegiance." A foreigner is a most improper judge of what the allegiance is which binds an English subject to his constitution. And therefore, upon that idea of utter incompetency in a stranger, is every foreigner directly removed and repelled from the possibility of exercising a function that he is supposed utterly unable to discharge. If one French man shall be suffered to find a bill of indictment between our Lord the King and his subjects, by a parity of reasoning, may twenty-three men of the same descent be put into the box, with authority to find a bill of indictment. By the same reason that the Court may communicate with one man, whose language they do not know, may they communicate with twenty-three natives of twenty-three different countries and languages. How far do I mean to carry this?—Thus far:—that every statute, or means by which allegiance may be shaken off, and any kind of benefit or privilege conferred upon an emigrating foreigner, is for ever to be considered by a Court of Justice with relation to that natural incompetency to perform certain trusts, which is taken for granted and established by the law of England. I urge it with this idea, that whether the privilege is conferred by letters patent, making the foreigner a denizen, or whether by act of Parliament, making him as a native subject, the letters patent or act of Parliament should be construed *secundum subjectam materiam*; and a Court of Justice will take care, that no privilege be supposed to be granted incompatible with the original situation of the party to whom, or the constitution of the country in which, it is conferred. Therefore, my Lords, my clients have pleaded, that the bill of indictment to which they have been called upon to answer, has been found, among others, by a foreigner, born under a foreign allegiance, and incapable of exercising the right of a Juror, upon the grand, or the petty inquest. That is the substance of the plea in abatement,—The Counsel for the

Crown have replied, and we have demurred to the second and third parts of the replication.

My Lords, I take it to be a rule of law, not now to be questioned, that there is a distinction in our statute laws;—some are of a public, some of a private nature. That part of the legislative edict which is considered as of a public nature, is supposed to be recorded in the breasts of the King's Judges. As the King's Judges, you are the depositories and the records of the public law of the country. But wherever a private indulgence is granted, or a mere personal privilege conferred, the King's Judges are not the depositories of such laws, though enacted with the same publicity; you are not the repositories of deeds or titles which give men franchises or estates, nor of those statutes which ease a man of a disability, or grant him a privilege.—With regard to the individual to whom they relate, they are mere private acts, muniments, or deeds, call them by what name you please; they are to be shown as private deeds, to such Courts as it may be thought necessary to bring them forward. Therefore, if there be any act of Parliament, by which a man is enabled to say he has shaken off the disability which prevented him from intermeddling in the political or judicial arrangement of the country; if he says he is no longer to be considered as an alien, he must show that act specially to the Court in his pleading. The particular authority, whether by letters of denization, or act of Parliament, must be set forth, that the Court may judge of them—that if it be by act of Parliament, the Court may see whether he comes within the provisions of the act. This replication does no such thing. The second and the third parts were intended to be founded upon the statute of Charles II. and also, I suppose, upon the subsequent statute, made to give it perpetuity, with certain additional requisites. The statute of Charles recites, that the kingdom was wasted by the unfortunate troubles of that time; and that trade had decreased, for want of merchants. After thus stating generally the grievances which had afflicted the trade and population of the country, and the necessity of encouraging emigration from abroad, it goes on and says, that strangers may be induced to transport themselves and families, to replenish the country, if they may be made partakers of the advantages and free exercise of their trades, without interruption and disturbance. The grievance was the scarcity of men; the remedy was the encouragement of foreigners to transport themselves; and the encouragement

given was such a degree of protection, as was necessary to the full exercise of their trades, in the dealing, buying, and selling, and enjoying the fullest extent of personal security. Therefore it enacts, that all foreigners, of the Protestant religion, and all merchants, &c. who shall, within the *term of seven years*, transport themselves to this country, shall be deemed and reputed natural-born subjects, and *may implead and be impleaded, and prosecute and defend suits*. The intention was, to give them protection for the purposes for which they were encouraged to come here; and therefore the statute, instead of saying generally they shall be subjects *to all intents and purposes*, specifically enumerates the privileges they shall enjoy. If the legislature intended to make them subjects *to all intents and purposes*, it had nothing more to do than say so. But not having meant any such thing, the statute is confined to the enumeration of the mere hospitable rights and privileges to be granted to such foreigners as come here for special purposes. It states, that he may implead, and shall be answered unto—that he may prosecute and defend suits. Why go on and tell a man, who is *to all intents and purposes* a natural born subject, that he may implead and bring actions? I say, it is to all intents and purposes absurd and preposterous. If *all* privileges be granted in the first instance, why mention *particular* parts afterwards? A man would be esteemed absurd, who by his grant gave a thing under a general description, and afterwards granted the particular parts. What would be thought of a man who gave another his horse, and then said to the grantee, “I also give you liberty to ride “him, when and where you please?”—What was the case here? The Government of Ireland said, we want men of skill and industry—we invite you to come over—our intention is, that if you be Protestants, you shall be protected; but you are not to be judges, or legislators, or kings. We make an act of Parliament, giving you protection and encouragement to follow the trades for your knowledge in which we invite you—you are to exercise your trade *as a natural born subject*.—How?—With full power to make a bargain and enforce it: we invest you with the same power, and you shall have the same benefit, as if you were appealing to your own natural form of public justice: you shall be here as a French man in Paris, buying and selling the commodities appertaining to your trade.

Look at another clause in the act of Parliament which is said to make a legislator of this man, or a Juror, to pass upon

the life and death of a fellow-subject—no, not a fellow-subject—but a stranger. It says, “you may purchase an estate, “and you may enjoy it, without being a trustee for the “Crown.” Why was that necessary, if he were a subject *to all intents and purposes*?

This statute had continuance for the period of seven years only: that is, it limited the time in which a foreigner might avail himself of its benefits to seven years. The statute 4 Geo. 1. revives it, and makes it perpetual. I trust I may say, that whenever an act of Parliament is made, giving perpetuity to a former act, no greater force or operation can be given to the latter, than would have been given to the former, had it been declared perpetual at the time of its enactment. An act of that kind is merely to cure the defect of continuance; therefore, it does no more than is necessary to that end. Then how will it stand?—Thus:—that any man, who within seven years after the passing of the act of Charles 2. performing the requisites there mentioned, shall have the privileges thereby granted for ever thereafter. The Court would assume the office of legislation, not of construction, if they inferred, or supplied by intendment, a longer period than seven years: there is nothing in the subsequent act changing the term of seven years limited in the former: it is not competent to a Court of Justice to alter or extend the operation of a statute by the introduction of clauses not to be found in it. It is the business of the legislature to enact laws—of the Court to expound them.

It is worthy of observation, my Lords, that this subsequent statute has annexed certain explicit conditions to be performed by the person who is to take the benefit of the preceding act; for it is provided, that no person shall have the benefit of the former act, unless he take the several oaths appointed to be taken by the latter; among which, is the oath against the Pretender, which is not stated in the replication.

There is a circumstance in the latter act, which, with regard to the argument, is extremely strong, to show, that the legislature did not intend to grant the universal franchise and privilege to all intents and purposes. It revives every part of the former, save that part exempting aliens from the payment of excise. Will it be contended, that an alien should be considered as a natural born subject *to all intents and purposes*, and yet be exempt from the payment of excise? It is absurd, and impossible.

Put it in another point of view. What is an act of naturali-

zation? It is an encroachment upon the common law rights, which every man born in this country has in it: those rights are encroached upon and taken away by a stranger. The statute therefore should be construed with the rigour of a penal law. The Court, to be sure, will see, that the stranger has the full benefit intended for him by the statute; but they will not give him any privilege inconsistent with the rights of the natural born subjects, or incompatible with the fundamental principles of the constitution into which he is admitted; and I found myself upon this, that after declaring that he shall be considered *as* a natural born subject, the act states such privileges only as are necessary to the exercise of trade and the enjoyment of property.

Therefore, it comes back to the observation just now made. Is not any man pleading a statute of naturalization, by which he claims to be considered as a natural born subject, bound to set forth a compliance with all the requisites pointed out by that statute? He is made a native to a certain extent, upon complying with certain conditions; is he not bound to state that compliance? Here he has not stated them. But I go further; I say, that every condition mentioned in the statute of Charles should be set forth in the second part of the replication; that he came with an intent of settling; that he brought his family and his stock; that he took the oaths before the proper magistrates; and after a minute statement of every fact, he should state the additional oath required by the statute Geo. 1.

But, my Lords, a great question remains behind to be decided upon. I know of no case upon it. I do not pretend to say, that the industry of other men may not have discovered a case. But I would not be surprized, if no such case could be found; if since the history of the administration of justice in all its forms in England, a stranger had not been found intruding himself into its concerns; if through the entire history of our Courts of Justice, an instance was not to be found, of the folly of a stranger interfering upon so awful a subject, as the breach of allegiance between a subject and his king. My Lords, I beg leave upon this part to say, that it would be a most formidable thing—that a Court of Justice would pronounce a determination big with danger, if they say, that an alien may find a bill of indictment involving the doctrine of allegiance. It is permitting him to intermeddle in a business, of which he cannot be supposed to have any knowledge. Shall a subject of the Irish Crown be charged with a breach of his allegiance

upon the saying of a German, an Italian, a Frenchman, or a Spaniard? Can any man suppose any thing more monstrous or absurd, than that of a stranger being competent to form an opinion upon the subject? I would not form a supposition upon it. At a time when the generals, the admirals, and the captains of France are endeavouring to pour their armies upon us, shall we permit their petty detachments to attack us in judicial hostility? Shall we sit inactive, and see their skirmishers take off our fellow-subjects by explosions in a jury room?

When did this man come into this country? Is the raft upon which he floated now in Court? What has he said upon the back of the bill? What understanding had he of it? If he can write more than his own name, and had wrote *ignoramus* upon the back of the indictment, he might have written truly; he might say, he knew nothing of the matter. He says, he is naturalized—I am glad of it—you are welcome to Ireland, sir—you shall have all the privileges of a stranger, independent of the invitation by which you came;—if you sell, you shall recover the price of your wares—you shall enforce the contract;—if you purchase an estate, you shall transmit it to your children, if you have any—if not, your devisee shall have it. But you must know, that in this constitution, there are laws binding upon the Court as strongly as upon you:—the statute itself which confers the privileges you enjoy, makes you incapable of discharging offices—Why? Because they go to the fundamentals of the constitution, and belong only to those men who have an interest in that constitution transmitted to them from their ancestors. Therefore, my Lords, the foreigner must be content he shall be kept apart from the *judicial* functions;—in the extensive words of the act of Parliament, he shall be kept from “all places of *trust* whatsoever.” If the act had been silent in that part, the Court would notwithstanding be bound to say, that, it did not confer the power of filling the high departments of the state. The alien would still be incapable of sitting in either House of Parliament—he would be incapable of advising with the King, or holding any place of constitutional trust whatever. What! shall it be said, there is no trust in the office of a Grand Juror? I do not speak or think lightly of the sacred office confided to your Lordships, of administering justice between the Crown and the subject, or between subject and subject:—I do not compare the office of a Grand Juror to that. But, in the name of God, with regard to the issues of life and death—

with regard to the consequences of imputed or established criminality, what difference is there, in the importance of the constitution, between the *Juror* who brings in a verdict, and the *Judge* who pronounces upon that verdict the sentence of the law? Shall it be said, that the former is no place of *trust*? What is the place of trust meant by the statute? It is not merely giving a thing to another, or depositing for safe custody—it means *constitutional trust*—the trust of executing given departments, in which the highest confidence must be reposed in the man appointed to perform them. It means not the trust of keeping a paltry chattel—it means the awful trust of keeping the secrets of the State, and of the King. Look at the weight of the obligation imposed upon the Juror—look at the enormous extent of the danger, if he violate or disregard it.—At a time like the present—a time of war—what! is the trust to be confided to the conscience of a Frenchman? But I am speaking for the lives of my clients, and I do not choose, even here, to state the terms of the trust, lest I might furnish as many hints of mischief, as I am anxious to furnish arguments of defence.—But shall a Frenchman, at this moment, be entrusted with those secrets upon which your sitting upon that bench may eventually depend? What is the inquiry to be made?—Having been a pedlar in the country, is to have the selling of the country, if he be inclined to do so?—Is to have confided to him the secrets of the State? He *may* remember to have had a *first* allegiance—that he was *sworn* to it:—he might find civilians to aid his perfidious logic, and to tell him, that a secret communicated to him by the humanity of the country which received him, might be disclosed to the older and better matured allegiance sworn to a former power! He might give up the perfidious use of his conscience to the integrity of the older title. Shall the power of calling upon an Irishman to take his trial before an Irish Judge, before the country, be left to the broken speech—the *lingua franca*, of a stranger, coming among you and saying, “I was naturalized by act of Parliament, and I cannot carry on my trade, without dealing in the blood of your citizens?”—He holds up your statute as his protection, and flings it against your liberty, claiming the right of exercising a judicial function, feeling at the same time the honest love for an older title to allegiance. It is a love which every man ought to feel, and which every subject of this country would feel, if he left this country to-morrow, and were to spend his last hour among the Hottentots of Africa. I do

trust in God, there is not a man who hears me, who does not feel, that he would carry with him to the remotest part of the globe, the old ties which bound him to his *original* friends, his country, and his King:—I do, as the advocate of my clients, of my country—as the advocate for you, my Lords, whose elevation prevents you from the possibility of being advocates for yourselves—for your children, stand up and rely upon it, that this act of Parliament has been confined to a limited operation—it was enacted for a limited purpose, and will not allow this meddling stranger to pass upon the life, fame, or fortune of the gentlemen at the bar—of me, their advocate—of you, their Judges—or of any man in the nation. It is an intrusion not to be borne.

My Lords, you deny him no advantage that strangers ought to have. By extending the statute, you take away a right from a native of the country, and you transfer one to an intermeddling stranger. I do not mean to use him with disrespect; he may be a respectable and worthy man: but whatever he may be, I do, with humble reliance upon the justice of the Court, deprecate the idea of communicating to him that high, awful, and tremendous privilege, of passing upon life, of expounding the law in cases of treason; it being a fundamental maxim, that strangers will most improperly be called upon to judge of breaches of allegiance between a subject and his sovereign.

The objection being over-ruled, the Prisoners pleaded *Not Guilty*.

On Thursday, July 12, the Prisoners being put to the bar, and the Attorney-General (Toler) having opened the case for the prosecution, and called witnesses, Alderman Alexander deposed, that he found the following paper in a box, not locked, upon a table in the parlour of Mr. John Sheares' house, Mr. Henry Sheares being present.

The paper found by Alderman Alexander was then read as follows:—the words in *italics* were interlined—those between crotchets were struck across with a pen.

“ IRISHMEN,

[“ Your Country is free; all those Monsters who usurped Its
“ Government to oppress its people are in our hands, except such
“ as have]

“ Your Country is free and you are about to be avenged [already]
“ that Vile Government which has so long and so Cruelly oppressed
“ You, is no more; some of its most Atrocious Monsters have
“ already paid the forfeit of their Lives, and the rest are in our hands

“ [waiting their fate.] The National Flag, *the Sacred Green*, is at
 “ this Moment flying over the Ruins of Despotism, and that Capital
 “ which a few hours past [was the Scene] Witnessed the De-
 “ bauchery, [the Machinations] plots and Crimes of your Tyrants,
 “ is now the Citadel of Triumphant Patriotism and *Virtue*. Arise
 “ then, United Sons of Ireland; arise like a great and powerful
 “ people, Determined to [live] be free, or die, Arm Yourselves by
 “ every means in your power, and Rush like Lions on your Foes;
 “ Consider, that [in Disarming your Enemy] for every Enemy you
 “ disarm, you arm a friend, and thus become doubly powerful; In
 “ the Cause of Liberty, inaction is Cowardice, and the Coward
 “ shall forfeit the property he has not the Courage to protect. Let
 “ his Arms be Seized and Transferred to those Gallant [Patriots]
 “ *Spirits* who want, and will use them; Yes, Irishmen, we swear by
 “ that eternal Justice, in whose Cause you fight, that the brave
 “ Patriot, who survives the present glorious Struggle, and the family
 “ of him who has fallen, or shall fall hereafter in it, shall Receive
 “ from the hands of a grateful Nation, an Ample Recompence out
 “ of [those funds] that property which the Crimes of our Enemies
 “ [shall] have Forfeited into its hands, and his Name [too] shall be
 “ Inscribed on the National Record of Irish Revolution, as a glorious
 “ Example to all posterity; *But we likewise swear to punish Robbery*
 “ *with death and Infamy*.

“ We also swear, that we will never Sheathe the Sword until
 “ every [person] being in the Country is restored to those equal
 “ Rights, which the God of Nature has given to all Men, Until an
 “ Order of things shall be established, in which no Superiority shall
 “ be acknowledged among the Citizens of Erin, but that, [which]
 “ of Virtue and Talent [shall Intitle to.]

[“ As for those degenerate Wretches who turn their Swords against
 “ their Native Country, the National Vengeance awaits them: Let
 “ them find no quarter unless they shall prove their Repentance by
 “ *speedily* deserting, Exchanging from the Standard of Slavery, for
 “ that of Freedom, under which their former Errors may be buried,
 “ and they may Share the Glory and advantages that are due to the
 “ Patriot Bands of Ireland.]

“ Many of the Military feel the love of Liberty glow within their
 “ Breasts, and have [already to] joined the National Standard;
 “ receive [those] with open Arms, such as shall follow so Glorious
 “ an Example, they Can render signal Service to the Cause of
 “ freedom, and shall be rewarded according to their deserts: But
 “ for the Wretch who turns his Sword against his Native Country
 “ let the National Vengeance be Visited on him, let him find no
 “ Quarter, Two other crimes demand——

“ Rouse all the Energies of your Souls; call forth *all* the Merit
 “ and abilities which a vicious Government Consigned to obscurity,
 “ and under the Conduct of your Chosen Leaders March with a
 “ Steady Step to Victory; heed not the Glare of [a Mercenary]
 “ hired Soldiery, or *Aristocratic Yeomanry*, they Cannot stand the

“ Vigorous Shock of Freemen, [close with them Man to Man, and
 “ let them see what Vigour the Cause of freedom can.] Their
 “ Trappings and their Arms will soon be Yours, and the Detested
 “ Government of England to which we Vow eternal hatred, shall
 “ learn, that the Treasures [she, it] *they* Exhausts on [their mer-
 “ cenary] its accoutered Slaves for the purpose of Butchering
 “ Irishmen, shall but further Enable us to turn their Swords on its
 “ devoted head.

“ Attack them in every direction by day and by Night; avail
 “ yourselves of the Natural Advantages of your Country, which are
 “ Innumerable, *and with which you are better acquainted than they*;
 “ where you Cannot Oppose them in full force, Constantly harass
 “ their Rear and their flanks; Cut off their provisions and Magazines,
 “ and prevent them as much as possible from Uniting their forces;
 “ let whatever Moments you Cannot [pass in] Devote to fighting for
 “ your Country, be [Devoted to] passed in learning how to fight for
 “ it, or preparing the means of War, for War, War alone must
 “ occupy every mind, and every hand in Ireland, until its long
 “ oppressed Soil be purged of all its Enemies.

“ Vengeance, Irishmen, Vengeance on your Oppressors.—Re-
 “ member what thousands of your dearest friends have perished by
 “ their [Murders, Cruel plots] *Merciless Orders*; Remember their
 “ burnings, their rackings, their torturings, their Military Massacres,
 “ and their legal Murders. Remember ORR.”

The case for the prosecution, and the evidence for the Prisoners, closed at midnight.

Mr. Curran.—My Lord, before I address you or the Jury, I would wish to make one preliminary observation; it may be an observation only—it may be a request:—for myself, I am indifferent—but I feel I am now unequal to the duty—I am sinking under the weight of it.—We all know the character of the Jury:—the interval of their separation must be short, if it should be deemed necessary to separate them. I protest I have sunk under this trial. If I must go on, the Court must bear with me—the Jury may also bear with me:—I will go on, until I sink. But after a sitting of sixteen hours, with only twenty minutes interval, in these times, I should hope it would not be thought an obtrusive request, to hope for a few hours interval of repose, or rather for recollection.

Lord Carleton.—What say you, Mr. Attorney-General?

Mr. Attorney-General.—My Lords, I feel such public inconvenience from adjourning cases of this kind, that I cannot consent. The Counsel for the Prisoners cannot be more exhausted than those for the prosecution. If they do not choose to speak to the evidence, we shall give up our right

to speak, and leave the matter to the Court altogether.— They have had two speeches already (Mr. Ponsonby had spoken), and leaving them unreplied to is a great concession.

Lord Carleton.—We would be glad to accommodate as much as possible. I am as much exhausted as any other; but we think it better to go on.

Mr. Curran,—

Gentlemen of the Jury.—It seems, that much has been conceded to us. God help us! I do not know what has been conceded to me, if so insignificant a person may have extorted the remark. Perhaps it is a concession, that I rise in such a state of mind and body—of collapse and deprivation, as to feel but a little spark of indignation raised by the remark, that much has been conceded to the Counsel for the Prisoner, much has been conceded to the Prisoners!—Almighty, and merciful God, who lookest down upon us, what are the times to which we are reserved, when we are told, that much has been conceded to Prisoners who are put upon their trial at a moment like this—of more darkness and night of the human intellect, than a darkness of the natural period of twenty-four hours—that public convenience cannot spare a respite of a few hours to those who are accused for their lives—and that much has been conceded to the advocate, almost exhausted in the poor remark which he has endeavoured to make upon it!

My countrymen,—I do pray you, by the awful duty which you owe your country—by that sacred duty which you owe your character (and I know how you feel it)—I do obtest you, by the Almighty God, to have mercy upon my client—to save him, not from guilt, but from the baseness of his accuser, and the pressure of the treatment under which I am sinking. With what spirit did you leave your habitations this day?—with what state of mind and heart did you come here from your family?—with what sentiments did you leave your children—to do an act of great public importance—to pledge yourselves at the throne of eternal justice, by the awful and solemn obligation of an oath, to do perfect, cool, impartial and steady justice, between the accuser and the accused? Have you come abroad under the idea, that public fury is clamorous for blood?—that you are put there under the mere formality or memorial of death, and ought to gratify that fury with the blood for which it seems to thirst? If you are—I have known some of you—more than one, or two, or three, in some of those situations, where the human heart speaks its honest sentiments. I think I ought to know

you well—you ought to know me—and there are some of you, who ought to listen to what so obscure an individual may say, not altogether without some degree of personal confidence and respect. I will not solicit your attention by paying the greatest compliments which man can pay to man; but I say, I hold you in regard as being worthy of it—I will speak such language as I would not stoop to hold, if I did not think you worthy of it. Gentlemen, I will not be afraid of beginning with what some may think I should avoid, the disastrous picture which you must have met upon your way to this Court. A more artful advocate might endeavour to play with you, in supposing you to possess a degree of pity and of feeling beyond that of any other human being. But I, Gentlemen, am not afraid of beginning by warning you against those prejudices, which all must possess—by speaking strongly against them---by striking upon the string, if not strong enough to snap it, will wake it into vibration. Unless you make an exertion beyond the power almost of men to make, you are not fit to try this cause. You may preside at such an execution as the witness would extol himself for---at the sentence flowing from a very short inquiry into reason; but you are not fit to discharge the awful trust of honest men, coming into the box, indifferent as they stand unsworn, to pronounce a verdict of death and infamy, or of existence and of honour. You have only the interval between this and pronouncing your verdict to reflect, and the other interval when you are resigning up your last breath, between your verdict and your grave, when you may lament that you did not as you ought.

Do you think I want to flatter your passions?---I would scorn myself for it. I want to address your reason---to call upon your consciences---to remind you of your oaths, and the consequence of that verdict, which upon the law and the fact you must give between the accuser and the accused. Part of what I shall say, must of necessity be addressed to the Court, for it is matter of law:---but upon this subject, every observation in point of law is so inseparably blended with the fact, that I cannot pretend to say, that I can discharge your attention, Gentlemen, even when I address the Court. On the contrary, I shall the more desire your attention, not so much that you may understand what I shall say, as what the Court shall say.

Gentlemen, this indictment is founded upon the stat. 25 Edward 3. The statute itself begins with a melancholy

observation upon the proneness to deterioration, which has been found in all countries unfortunately to take place in their criminal law, particularly in the law respecting high treason. The statute begins with reciting, that in the uncertainty of adjudications, it became difficult to know what was treason, and what was not; and to remove further difficulty, it professes to declare all species of treason, that should thereafter be so considered; and by thus regulating the law, to secure the state and the constitution, and the persons of those interested in the executive departments of the government, from the common acts of violence that might be used to their destruction. The three first clauses of the statute seem to have gone a great way indeed upon the subject; because the object of the provisions was to protect the person—and I beg of you to understand what I mean by person, I mean the *natural person*; I mean no figure of speech—not the monarch in the abstract, but the natural man. The first clause was made without the smallest relation to the *executive power*, but solely to the natural body and person. The words are, “when a man doth *compass* or “*imagine* the death of the King, or of our Lady his Queen, “or their eldest son and heir, and thereof be upon sufficient “proof attainted of open deed by men of his condition, he “shall be a traitor.” This I say relates only to the natural person of the King. The son and heir of the King is mentioned in the same manner, but he has no power; and therefore a compassing his death, must mean the death of his natural person; and so must it be in the case of the King. To conceive the purpose of destroying a common subject, was once a felony of death, and that was expressed in the same language, *compassing* and *imagining* the death of the subject. It was thought right to dismiss that severe rigour of the law in the case of the subject, but it was thought right to continue it in the case of the King, in contradistinction to all the subjects within the realm.

The statute, after describing the persons, describes what shall be evidence of that high and abominable guilt:—it must appear by open deed; the intention of the guilty heart must be proved by evidence of the open deed committed towards the accomplishment of the design. Perhaps in the hurry of speaking, perhaps from the mistakes of reporters—sometimes from one, and sometimes from the other—Judges are too often made to say, that such or such an overt act is, if proved to have been committed, ground upon which the Jury must find the party guilty of the accusation. I must

deny the position, not in the reason of the thing, but I am fortified by the ablest writers upon the law of treason. In the reason of the thing, because the design entertained, and act done, are matters for the Jury. Whether a party compassed the King's death or not, is matter for the Jury: and therefore if a certain fact be proved, it is nonsense to say, that such a conclusion *must* follow; because a conclusion of law would then be pronounced by the Jury, not by the Court. I am warranted in this by the writers cited by Mr. Justice Foster; and therefore, Gentlemen, upon the first count in the indictment, you are to decide a plain matter of fact—1st, Whether the Prisoner did compass and imagine the death of the King?—and whether there be any act proved, or apparent means taken, which he resorted to for the perpetration of that crime? Upon this subject, many observations have already been made before me. I will take the liberty of making one—I do not know whether it has been made before. Even in a case where the overt act stated has of its own nature gone to the person of the King, still it is left to the Jury to decide, whether it was done with the criminal purpose alleged, or not. In Russell's case, there was an overt act of a conspiracy to seize the guards: the natural consequence threatened from an act of gross violence so immediately approaching the King's person, might fairly be said to affect his life; but still it was left to the Jury to decide, whether that was done for the purpose of compassing the King's death. I mention this, because I think it a strong answer to those kind of expressions, which in bad times fall from the mouths of prosecutors—neither law nor poetry, but sometimes half metaphysical. Laws may be enacted in the spirit of sound policy, and supported by superior reason; but when only half considered, and their provisions half enumerated, they become the plague of the government, and the grave of principle. It is that kind of refinement and cant which overwhelmed the law of treason, and brought it to a metaphysical death: the laws are made to pass through a contorted understanding, vibratory and confused; and therefore, after a small interval from the first enactment of any law in Great Britain, the dreams of fancy get around, and the law is lost in the mass of absurd comment. Hence it was that the statute gave its awful declarations to those glossarisms; so that if any case arise, apparently within the statute, they were not to indulge themselves in conjecture, but refer to the standard, and abide by the law as marked out

for them. Therefore, I say, that the issue for the Jury here is to decide in the words of the statute, whether the Prisoners did compass the death of the King; and whether they can say, upon their oaths, that there is any overt act proved in evidence, manifesting an intention of injury to the natural person of the King?

I know that the semblance of authority may be used to contradict me: if any man can reconcile himself to the miserable toil of poring over the records of guilt, he will find them marked, not in black, but in red—the blood of some unfortunate men leaving the marks of folly, barbarity, and tyranny. But I am glad that men, who in some situations appear not to have had the pulse of honest compassion, have made sober reflections in the hour of political disgrace. Such has been the fate of Lord Coke, who in the triumph and insolence of power, pursued a conduct, which in the hour of calm retreat, he regretted in the language of sorrow and disappointment. He then held a language which I willingly repeat—“That a conspiracy to levy war, “was no act of compassing the *murder* of the King.”—There he spoke the language of law and of good sense; for a man shall not be charged with one crime, and convicted of another. It is a narrow and a cruel policy, to make a conspiracy to levy war an act of compassing the King’s death; because it is a separate and distinct offence; because it is calling upon the honest affections of the heart, and creating those pathological effusions, which confound all distinct principles of law—a grievance not to be borne in a state, where the laws ought to be certain.

This reasoning is founded upon the momentary supposition that the evidence is true; for you are to recollect the quarter from whence it comes; there has been an attempt, by precipitate confession, to transfer guilt to innocence, in order to escape the punishment of the law. Here, Gentlemen, there is evidence of levying war, which act, it is said, tends to the death of the King: that is a constructive treason, calculated as a trap for the loyalty of a Jury; therefore you should set bounds to proceedings of that kind; for it is an abuse of the law, to make one class of offence, sufficiently punished already, evidence of another. Every Court, and every Jury, should set themselves against crimes, when they come to determine upon distinct and specified guilt: they are not to encourage a confusion of crimes, by disregarding the distinction of punishments; nor show the effusion of their loyalty, by an effusion of blood.

I cannot but say, that when cases of this kind have been under judgment in Westminster-Hall, there was some kind of natural reason to excuse this confusion in the reports—the propriety of making the person of the King secure—a war immediately adjoining the precincts of the palace—a riot in London might endanger the life of the King. But can the same law prevail in every part of the British empire? It may be an overt act of compassing the King's death, to levy war in Great Britain: but can it be so in Jamaica, in the Bahama Islands, or in Corsica, when it was annexed to the British empire? Suppose at that time a man had been indicted there for compassing the King's death, and the evidence was, that he intended to transfer the dominion of the island to the Genoese, or the French; what would you say, if you were told, that was an act by which he intended to murder the King? By seizing Corsica, he was to murder the King! How can there be any immediate attempt upon the King's life, by such a proceeding? It is not *possible*, and therefore no such consequence can be *probably* inferred; and therefore I call upon you to listen to the Court with respect—but I also call upon you to listen to common sense, and consider, whether the conspiring to raise war can in this country be an overt act of compassing the King's death in this country? I will go further:—if the statute of Edward 3. had been conceived to make a conspiracy to levy war an overt act of compassing the King's death, it would be unnecessary to make it penal by any subsequent statute; and yet subsequent statutes were enacted for that purpose; which I consider an unanswerable argument, that it was not considered as coming within the purview of the clause against compassing the King's death.

Now, Gentlemen, you will be pleased to consider, what was the evidence brought forward to support this indictment. I do not think it necessary to exhaust your attention, by stating at large the evidence given by Captain Armstrong. He gives an account, which we shall have occasion to examine, with regard to its credibility. He stated his introduction, first, to Mr. Henry Sheares, afterwards to his brother; and he stated a conversation, which you do not forget—so strange has it been! But in the whole course of his evidence, so far from making any observation, or saying a word of connexion with the power at war with the King, he expressly said, that the insurrection, by whomsoever prepared, or by what infatuation encouraged, was to

be a *home* exertion, independent of any foreign interference whatever. And therefore I am warranted in saying, that such an insurrection does not come within the first clause of the statute. It cannot come within the second, of adhering to the King's enemies; because that means his *foreign* enemies; and here, so far from any intercourse with them, they were totally disregarded.

Adhering to the King's enemies, means co-operating with them, sending them provisions, or intelligence, or supplying them with arms. But I venture to say, that there has not been any one case deciding that any act can be an adherence to a foreign enemy, which was not calculated for the advantage of that enemy. In the case of Jackson, Hensey, and Lord Preston, the parties had gone as far as they could in giving assistance. So it was in Quigley's. But in addition to this, I must repeat, that it is utterly unnecessary the law should be otherwise; for levying war is, *of itself*, a crime; therefore it is unnecessary, by a strained construction, to say, that levying war, or conspiring to levy war, should come within any other clause equally penal, but not so descriptive.

But, Gentlemen, suppose I am mistaken in both points of my argument; suppose the Prisoners (if the evidence were true) did compass the King's death, and adhere to the King's enemies; what are you to found your verdict upon?—Upon your oaths:—what are they to be founded upon?—Upon the oath of the witness:—and what is that founded upon?—Upon this, and this only—that he does believe there is an eternal God, an intelligent supreme existence, capable of inflicting eternal punishment for offences, or conferring eternal compensation, upon man, after he has passed the boundary of the grave? But where the witness believes he is possessed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds regardless of the number of his offences, and undisturbed by the terrors of exhausted fancy, which might save you from the fear, that your verdict is founded upon perjury. I suppose he imagines, that the body is actuated by some kind of animal machinery. I know not in what language to describe his notions. Suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness, compared to the manner in which he considers himself to have been created; or his abominable heart conceives its ideas; or his tongue communicates his notions. Suppose him, I say, to think so; what

is perjury to him? He needs no creed, if he thinks his miserable body can take eternal refuge in the grave, and the last puff of his nostrils can send his soul into annihilation! He laughs at the idea of eternal justice, and tells you, that the grave into which he sinks, as a log, forms an entrenchment against the throne of God, and the vengeance of exasperated justice!

Do you not feel, my fellow countrymen, a sort of anticipated consolation, in reflecting, that the religion which gave us comfort in our early days, enabled us to sustain the stroke of affliction, and endeared us to one another, and when we see our friends sinking into the earth, fills us with the expectation, that we rise again—that we but sleep for a while, to wake for ever? But what kind of communion can you hold—what interchange expect—what confidence place, in that abject slave—that condemned, despaired of wretch, who acts under the idea, that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that which is an object of terror to the best, and of hope to the confiding, is to him contempt, or despair?

Bear with me, my countrymen—I feel my heart run away with me—the worst men only can be cool.—What is the law of this country?—If the witness does not believe in God, or a future state, you cannot swear him.—What swear him upon? Is it upon the book—or the leaf?—You might as well swear him by a bramble, or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept, and says,—“May God so help me, as I swear the truth.” He is then attached to the divinity, upon the condition of telling truth; and he expects mercy from Heaven, as he performs his undertaking.—But the infidel!—By what can you catch his soul—or by what can you hold it?—You repulse him from giving evidence; for he has no conscience—no hope to cheer him—no punishment to dread!—What is the evidence touching that unfortunate young man? What said his own relation, Mr. Shervington? He had talked to him freely—had known him long. What kind of character did he give of him? Paine was his creed and his philosophy. He had drawn his maxims of politics from the vulgar and furious anarchy broached by Mr. Paine. His ideas of religion were adopted from the vulgar maxims of the same man—the scandal of inquiry—the blasphemer of his God as of his King. He bears testimony against himself, that he submitted to the undertaking of reading both his abominable tracts—that

abominable abomination of all abominations, Paine's "Age of Reason"—professing to teach mankind, by acknowledging that he did not learn himself!—working upon debauched and narrow understandings.—Why not swear the witness upon the vulgar maxims of that base fellow—that wretched outlaw and fugitive from his country and his God?—Is it not lamentable to see a man labouring under an incurable disease, and fond of his own blotches? "Do you wish (says he) to know my sentiments with regard to politics, I have learned them from Paine! I do not love a King—and if no other executioner could be found, I would myself plunge a dagger into the heart of George III.—because he is a King—and because he is my King, I swear by the sacred missal of Paine, I would think it a meritorious thing to plunge a dagger into his heart, to whom I had devoted a soul, which Mr. Paine says I have not to lend." Is this the casual effusion of a giddy young man, not considering the meaning of what he said? If it were said among a parcel of boarding-school misses, where he might think he was giving specimens of his courage by nobly denying religion, there might be some excuse. There is a latitude assumed upon some such occasions. A little blasphemy and a little obscenity passes for wit in some companies. But recollect, it was not to a little miss, whom he wished to astonish, that he mentioned these sentiments; but a kinsman, a man of that boiling loyalty.—I confess I did not approve of his conduct in the abstract—talking of running a man through the body; but I admired the honest boldness of the soldier who expressed his indignation in such warm language.—If Mr. Shervington swore true, Captain Armstrong must be a forsworn witness; it comes to that simple point. You cannot put it upon other ground. I put it to your good sense—I am not playing with your understandings—I am putting foot to foot, and credit to credit. One or other of the two must be perjured—which of them is it? If you disbelieve Captain Armstrong, can you find a verdict of blood upon his evidence?

Gentlemen, I go further—I know your horror of crimes—your warmth of loyalty. They are among the reasons why I respect and regard you. I ask you, then, will you reject such a witness?—or would you dismiss the friend you regarded, or the child you loved, upon the evidence of such a witness? Suppose him to tell his own story,—“I went to your friend, or your child—I addressed myself in the garb of friendship—in the smile of confidence—I courted con-

“fidence, in order to betray it—I traduced you—spoke all the evil I could against you, to inflame him—I told him, “your father does not love you.” If he went to you, and told you this—that he inflamed your child, and abused you to your friend, and said, “I come now to increase it by the horror of superadded cruelty,”—would you dismiss from your love and affection the child or the friend you loved for years?—You would not prejudge them. You would examine the consistency of the man’s story; you would listen to it with doubt, and receive it with hesitation.

Says Captain Armstrong, “Byrne was my bookseller—from him I bought my little study of blasphemy and obscenity with which I amused myself.”—“Shall I introduce Mr. Sheares to you?”—not saying which——What is done then?—He thought it was not right till he saw Captain Clibborn. Has he stated any reason, why he supposed Mr. Sheares had any wish at all to be introduced to him?—any reason for supposing, that Byrne’s principles were of that kind?—or any reason, why he imagined the intercourse was to lead to any thing improper? It is most material, that he says, he never spoke to Byrne upon political subjects; therefore he knew nothing of Byrne’s principles, nor Byrne of his: but the proposal was made, and he was so alarmed, that he would not give an answer till he saw his Captain.——Is not this incredible? There is one circumstance which made an impression upon my mind, that he assumed the part of a public informer, and in the first instance, came to the field with pledgets and bandages—he was scarcely off the table, when a witness came to his credit. It is the first time that I saw a witness taking fright at his own credit, and sending up a person to justify his character.

Consider how he has fortified it:—he told it all to Captain Clibborn!——He saw him every evening when he returned, like a bee, with his thighs loaded with evidence. What is the defence? That the Witness is unworthy of belief. My clients say, their lives are not to be touched by such a man;—he is found to be an informer—he marks the victim.—You know the world too well, not to know that every falsehood is reduced to a certain degree of malleability by an alloy of truth. Such stories as these are not pure and simple falsehoods—look at your Oateses, your Bedloes, and Dugdales! I am disposed to believe, shocking as it is, that this Witness had the heart, when he was surrounded by the little progeny of my client—when he was sitting in the

mansion in which he was hospitably entertained—when he saw the old mother supported by the piety of her son, and the children basking in the parental fondness of the father—that he saw the scene and smiled at it—contemplated the havoc he was to make, consigning them to the storms of a miserable world, without having an anchorage in the kindness of a father! Can such horror exist, and not waken the rooted vengeance of an eternal God? But it cannot reach this man beyond the grave. Therefore, I uphold him here. I can imagine it, Gentlemen, because, when the mind becomes destitute of the principles of morality and religion, all within the miserable being is left a black and desolated vast, never cheered by the rays of tenderness and humanity. When the belief of eternal justice is gone from the soul of man, horror and execution may set up their abode. I can believe, that the Witness—with what view, I cannot say—with what hope, I cannot conjecture—you may—did meditate the consigning of these two men to death, their children to beggary and reproach—abusing the hospitality with which he was received, that he might afterwards come here and crown his work, having obtained the little spark of truth by which his mass of falsehood was to be put into animation.

I have talked of the inconsistency of the story—Do you believe it, Gentlemen? The case of my client is, that the Witness is perjured; and you are appealed to, in the name of that ever-living God whom you revere, but whom he despiseth, to consider, that there is something to save him from the baseness of such an accuser.

But I go back to the testimony—I may wander from it, but it is my duty to stay with it. Says he, “Byrne makes an important application—I was not accustomed to it—I never spoke to him, and yet he, with whom I had no connexion, introduces me to Sheares—this is a *true brother*.” You see, Gentlemen, I state this truly—he never talked to Byrne about politics; how could Byrne know his principles? By inspiration? He was to know the edition of the man, as he knew the edition of books: “You may repose all confidence.” I ask not is this true; but I say it can be nothing else than false. I do not ask you to say it is doubtful—it is a case of blood—of life or death; and you are to add to the terrors of a painful death, the desolation of a family, overwhelming the aged with sorrow, and the young with infamy. Gentlemen, I should disdain to reason with you; I am pinning your minds down to one point, to

show you to demonstration, that nothing can save your minds from the evidence of such perjury; not because you may think it may be false, but because it is impossible it can be true. I put into the scales of justice, that execrable perjury, and I put into the other, the life, the fame, the fortune, the children of my client. Let not the balance tremble as you hold it; and, as you hold it now, so may the balance of eternal justice be held for you.

But is it upon his inconsistency only I call upon you to reject him? I call in aid the evidence of his own kinsman Mr. Shervington, and Mr. Drought, the evidence of Mr. Bride and Mr. Graydon. Before you can believe Armstrong, you must believe that all those are perjured. What are his temptations to perjury?---the hope of bribery and reward; and he did go up with his sheets of paper in his hand---here is one, it speaks treason---here is another---the accused grows paler---here is a third, it opens another vein. Had Shervington any temptation of that kind? No; let not the honest and genuine soldier lose the credit of it. He has paid a great compliment to the proud integrity of the King, his master, when he did venture, at a time like this, to give evidence---“I would not have come for one hundred guineas.” I could not refuse the effusion of my heart, and exclaiming, May the blessings of God pour upon you, and may you never want one hundred guineas!

There is another circumstance; I think I saw it strike your attention, my Lords; it was the horrid tale of the three servants whom he met upon the road---they had no connexion with the rebels---if they had, they were open to a summary proceeding. He hangs up one, shoots a second, and administers torture to the body of the third, in order to make him give evidence. Why, my Lords, did you feel nothing stir within you?---our adjudications had condemned the application of torture for the extraction of evidence. When a wild and furious assassin had made a deadly attempt upon a life of much public consequence, it was proposed to put him to the torture, in order to discover his accomplices. I scarcely know whether to admire most the awful and impressive lesson given by Felton, or the doctrine stated by the Judges of the land. “No” said he, “put me not to the torture; for in the extravagance of my pain, I may be brought to accuse yourselves.” What say the Judges? “It is not allowable by the law and constitution of England, to inflict torture upon any man, or to extract evidence under the coercion of personal sufferings.” Apply that to this

case---if the unfortunate man did himself dread the application of such an engine for the extraction of evidence, let it be an excuse for his degradation, that he sought to avoid the pain of body by public infamy. But there is another observation more applicable. Says Mr. Drought---“Had you no feeling, or do you think you will escape future vengeance?”—“Oh, sir, I thought you knew my ideas too well, to talk in that way.” Merciful God! Do you think it is upon the evidence of such a man, that you ought to consign a fellow subject to death? He who would hang up a miserable peasant, to gratify caprice, could laugh at remonstrance, and say, “You know my ideas of futurity.” If he thought so little of murdering a fellow creature, without trial and without ceremony, what kind of compunction can he feel within himself, when you are made the instruments of his savage barbarity? He kills a miserable wretch, looking perhaps for bread for his children, and who falls, unaccused, uncondemned. What compunction can he feel at sacrificing other victims, when he considers death as eternal sleep and the darkness of annihilation? These victims are at this moment led out to public execution—he has marked them for the grave---he will not bewail the object of his own work---they are passing through the vale of death, while he is dosing over the expectancy of mortal annihilation.

Gentlemen, I am too weak to follow the line of observation I had made; but I trust I am warranted in saying, that if you weigh the evidence, the balance will be in favour of the Prisoners.

But there is another topic or two to which I must solicit your attention. If I had been stronger in a common case, I would not have said so much---weak as I am here, I must say more. It may be said that the parole evidence may be put out of the case; attribute the conduct of Armstrong to folly, or passion, or whatever else you please, you may safely repose upon the written evidence. This calls for an observation or two. As to Mr. Henry Sheares, that written evidence, even if the hand-writing were fully proved, does not apply to him. I do not say it was not admissible. The writings of Sidney found in his closet were read---justly, according to some; but I do not wish to consider that now. But I say, the evidence of Mr. Dwyer has not satisfactorily established the hand-writing of John. I do not say it is not proved to a certain extent; but it is proved in the very slightest manner that you ever saw paper proved---it is barely evidence to go to you; and the Witness might be

mistaken. An unpublished writing cannot be an overt act of treason; so it is laid down expressly by Hale and Foster. A number of cases have occurred, and decisions have been pronounced, asserting, that writings are not overt acts, for want of publication; but if they plainly relate to an overt act proved, they may be left to the Jury for their consideration. But here it has no reference to the overt act laid; it could not be intended for publication until *after* the unfortunate event of revolution had taken place; and therefore, it could not be designed to *create* insurrection. Gentlemen, I am not counsel for Mr. John Sheares, but I would be guilty of cruelty, if I did not make another observation. This might be an idle composition, or the translation of idle absurdity from the papers of another country. The manner in which it was found leads me to think that the more probable. A writing designed for such an event as charged, would hardly be left in a writing box, unlocked, in a room near the hall door. The manner of its finding also shows two things:—that Henry Sheares knew nothing of it, for he had an opportunity of destroying it, as Alderman Alexander said he had; and further, that he could not have imagined his brother had such a design; and it is impossible, if the paper had been designed for such purposes, that it would not be communicated to him.

There is a point to which I will beseech the attention of your Lordships. I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country. Jackson's case was the first; Lord Clonmell made allusion to the point; but a Jury ought not to find guilty upon the testimony of a single witness. It is the opinion of Foster, that by the common law one witness, if believed, was sufficient. Lord Coke's opinion is, that two were necessary: they are great names; no man looks upon the works of Foster with more veneration than myself, and I would not compare him with the depreciated credit of Coke; I would rather leave Lord Coke to the character which Foster gives him; that he was one of the ablest lawyers, independent of some particulars, that ever existed in England. In the wild extravagance, heat, and cruel reign of the Tudors, such doctrines of treason had gone abroad, as drenched the kingdom with blood. By the construction of Crown Lawyers, and the shameful complaisance of Juries, many sacrifices had been made, and therefore it was necessary to prune away these excesses, by

the statute of Edw. 6, and therefore there is every reason to imagine, from the history of the times, that Lord Coke was right in saying, not by new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials were regulated. A law of Philip and Mary was afterwards enacted; some think it was a repeal of the statute of Edw. 6, some think not. I mention this diversity of opinions, with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the Prisoner, and that the Court will be of opinion, that the stat. 7 W. 3, did not enact any new thing, unknown to the common law, but redeemed it from abuse. What was the state of England? The King had been declared to have abdicated the throne; prosecutions, temporizing Juries, and the arbitrary construction of Judges, condemned to the scaffold those who were to protect the Crown—men who knew, that after the destruction of the cottage, the palace was endangered. It was not then the enactment of any thing new; it was founded on the caution of the times, and derived from the maxims of the constitution. I know the peevishness with which Burnet observed upon that statute; he is reprehended in a modest manner by Foster; but what says Blackstone, of great authority, of the clearest head and the profoundest reading? He differs from Montesquieu, the French philosopher:—

“ In cases of treason, there is the accused’s oath of allegiance to counterpoise the information of a single witness; and that may perhaps be one reason, why the law requires a *double* testimony to convict him: though the principal reason undoubtedly is, to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages.”

Gentlemen, I do not pretend to say, that you are bound by an English act of Parliament. You *may* condemn upon the testimony of a single witness. You, to be sure, are too proud to listen to the wisdom of an English law—illustrious independents! You may murder under the semblance of judicial forms, because you are proud of your blessed independence! You pronounce that to be legally done which would be murder in England, because you are proud! You may imbrue your hands in blood, because you are too proud to be bound by a foreign act of Parliament; and when you are to look for what is to save you from the abuse of arbitrary power, you will not avail yourself of it, because it is a foreign act of Parliament! Is that the independence of an Irish

Jury? Do I see the heart of any Englishman move, when I say to him, "Thou servile Briton, you cannot condemn upon the perjury of a single witness, because you are held in the tight waistcoat of the cogency of an act of Parliament?" If power seeks to make victims by judicial means, an act of Parliament would save you from the perjury of abominable malice. Talk not of proud slavery to law, but lament that you are bound by the integrity and irresistible strength of right reason; and at the next step bewail, that the all powerful Author of nature has bound himself in the illustrious servitude of his attributes, which prevent him from thinking what is not true, or doing what is not just. Go, then, and enjoy your independence. At the other side of the water, your verdict upon the testimony of a single witness would be murder. But here you can murder without reproach, because there is no act of Parliament to bind you to the ties of social life, and save the accused from the breath of a perjured informer. In England, a Jury could not pronounce conviction upon the testimony of the purest man, if he stood alone; and yet, what comparison can that case bear with a blighted and marred informer? where every word is proved to be perjury, and every word turns back upon his soul?

I am reasoning for your country and your children, to the last hour of your dissolution. Let me not reason in vain. I am not playing the advocate—you know I am not—your conscience tells you I am not. I put this case to the bench:—the statute 7 Hen. 3. does not bind this country by its legislative cogency; and will you declare positively and without doubt, that it is common law, or enacting a new one? Will you say it has no weight to influence the conduct of a Jury from the authority of a great and exalted nation?—the only nation in Europe where liberty has seated herself. Do not imagine, that the man who praises liberty is singing an idle song:—for a moment, it may be the song of a bird in his cage,—I know it may. But you are now standing upon an awful isthmus—a little neck of land, where liberty has found a seat. Look about you—look at the state of the country—the tribunals that dire necessity has introduced:—look at this dawn of law, admitting the functions of a Jury. I feel a comfort—methinks I see the venerable forms of Holt and Hale, looking down upon us, attesting its continuance. Is it your opinion that bloody verdicts are necessary—that blood enough has not been shed—that the bonds of society are not to be drawn close

again, nor the scattered fragments of our strength bound together, to make them of force, but they are to be left in that scattered state, in which every little child may break them to pieces? You will do more towards tranquillizing the country, by a verdict of mercy. Guard yourselves against the sanguinary excesses of prejudice or revenge; and though you think there is a great call of public justice, let no unmerited victim fall.

Gentlemen, I have tired you—I durst not relax. The danger of my client is from the hectic of the moment, which you have fortitude, I trust, to withstand. In that belief, I leave him to you; and as you deal justice and mercy, so may you find it; and I hope that the happy compensation of an honest discharge of your duty may not be deferred till a future existence, which this witness does not expect; but that you may speedily enjoy the benefits you will have conferred upon your country.

Mr. Prime Serjeant replied.

Mr. Henry Sheares.—My Lord, I wish to say a word.

Lord Carleton.—It is not regular, after the Counsel for the Crown have closed. I asked you at the proper time, you then declined. However, go on.

Mr. Henry Sheares.—My Lord, after the able and eloquent defence which has been made for me by my Counsel, it would ill become me to add any thing to it. But there is one part of it, which appears to me not to have been sufficiently dwelt upon. It is respecting that paper. I protest most solemnly, my Lord, I knew nothing of it; to know of it, and leave it where it was when the magistrate came, is a folly so glaring, that I cannot be supposed to have been guilty of it. When the Alderman rapped at the door, I asked, what was the matter? After he was admitted, he said he wanted my papers—I told him they were there. My Lords, is it possible, I could commit myself and all I hold dear, by so egregious an act of folly? Having the dearest sources of happiness around me, should I sacrifice them and myself, by leaving such a document in an open writing box?

My Lords, I beg your Lordships' pardon. I thank you for this indulgence:—it would be irregular for me to expatiate further. The evidence of Captain Armstrong is one of the most ingenious and maliciously fabricated stories, with respect to me, I ever heard of. My Lords, I should think, I could not be legally implicated by any paper found in that way.

Lord Carleton having given his charge, the Jury asked for the papers, which, with the Prisoners' consent, were taken to the jury-room.

The Jury then retired for seventeen minutes, and brought in a verdict, finding both the Prisoners—GUILTY.

As soon as the verdict was pronounced, the Prisoners clasped each other in their arms.

It being now near *eight* o'clock on *FRIDAY* morning, the Court adjourned to three o'clock.

The Clerk of the Crown read the indictment, and asked them what they had to say, why judgment of death and execution should not be awarded against them, according to law?

Mr. Henry Sheares.—My Lord, as I had no notion of dying such a death as I am about to meet, I have only to ask your Lordship for sufficient time to prepare myself and family for it. I have a wife and six children, and hope your humanity will allow me some reasonable time to settle my affairs, and make a provision for them.—(*Here he was so overwhelmed with tears, that he could not proceed.*)

Mr. John Sheares.—My Lord, I wish to say a few words before the sentence is pronounced, because there is a weight pressing upon my heart, much greater than that of the sentence which is to come from the Court. There has been, my Lord, a weight pressing upon my mind, from the first moment I heard the indictment read upon which I was tried; but that weight has been more peculiarly and heavily pressing upon my heart, when I found the accusation in the indictment enforced and supported upon the trial; and that weight would be left insupportable, if it were not for this opportunity of discharging it:---I should be insupportable, since a verdict of my country has stamped that evidence as well founded. Do not think, my Lords, that I am about to make a declamation against the verdict of the Jury, or the persons concerned in the trial; I am only about to call to your recollection a part of the charge, which my soul shudders at; and if I had not this opportunity of renouncing it before your Lordships and this auditory, no courage would be sufficient to support me. The accusation, my Lords, to which I allude, is one of the blackest kind, and peculiarly painful, because it appears to have been founded upon my own act and deed, and to be given under my own hand. The accusation of which I speak, while I linger here yet a minute, is, "that of holding out to the people of Ireland a "direction to give no quarter to the troops fighting for its

“defence.” My Lords, let me say this---and if there be any acquaintances in this crowded Court---I will not say, my *intimate friends*, but *acquaintances*, who do not know that what I say is truth, I should be reputed the wretch which I am not---I say, if any acquaintance of mine can believe, that *I could* utter a recommendation of giving no quarter *to a yielding and unoffending foe*, it is not the death that I am about to suffer which I deserve---no punishment could be adequate to such a crime. My Lords, I can not only acquit my soul of such an intention, but I declare in the presence of that God, before whom I must shortly appear, that the favourite doctrine of my heart was---*That no human being should suffer death, but where absolute necessity required it.*

My Lords, I feel a consolation in making this declaration, which nothing else could afford me; because it is not only a justification of myself, but where I am sealing my life with that breath, which cannot be suspected of falsehood, what I say, may make some impression upon the minds of men, not holding the same doctrine. I declare to God, I know no crime but assassination, which can eclipse or equal that of which I am accused. I discern no shade of guilt between that, and taking away the life of a foe, by putting a bayonet to his breast, when he is yielding and surrendering. I do request the bench to believe that of me---I do request my country to believe that of me---I am sure God will think that of me.

Now, my Lords, I have no favour to ask of the Court: my country has decided that I am guilty, and the law says that I shall suffer: it sees that I am ready to suffer.

But, my Lords, I have a favour to request of the Court, that does not relate to myself. My Lords, I have a brother whom I have ever loved dearer than myself; but it is not from any affection for him alone that I am induced to make the request. He is a man, and, therefore, I hope, prepared to die, if he stood as I do, though I do not stand unconnected, but he stands more dearly connected. In short, my Lords, to spare your feelings and my own, I do not pray that I should not die; but, that the husband, the father, the brother, and the son, all comprised in one person, holding these relations, dearer in life to him, than to any other man I know---for such a man I do not pray a pardon, for that is not in the power of the Court, but I pray a respite for such time as the Court in its humanity and discretion shall think proper. You have heard, my Lords, that his private affairs

require arrangement. I have yet a farther room for asking : if immediately both of us be taken off, an aged and revered mother, a dear sister, and the most affectionate wife that ever lived, and six children, will be left without protection, or provision of any kind. When I address myself to your Lordships, it is with the knowledge you will have of all the sons of our aged mother being gone. Two have perished in the service of the King; one very recently. I only request, that disposing of me with what swiftness, either the public mind or justice requires, a respite may be given to my brother, and that the family may acquire strength to bear it all. That is all I wish---I shall remember it to my last breath, and I will offer up my prayers for you to that Being, who has endued us all with sensibility to feel. This is all I have to ask. I have nothing more to say.

Lord Carleton passed sentence of death.

Mr. Attorney-General.---My Lord, I could, with great sincerity, allow any indulgence of time, if the circumstances of the case could by possibility admit of it. But, my Lords, I have a great public duty to discharge, and must pray that execution may be done upon the Prisoners to-morrow.

Court.---Be it so.

The Prisoners were executed pursuant to their sentence, on Saturday, the 14th of July, 1798, at the front of the prison, in Green Street, Dublin.

INFORMERS.

Mr. CURRAN's keenest invective was directed against these miscreants, from thorough horror of their occupation, and conviction of the demoralizing consequences resulting from their being employed and fostered by the Government. In his defence of Dr. Drennan, in 1794, on a prosecution for libel, he thus fervidly depicts his feelings:—

“I have been eighteen years at this bar (said Mr. Curran), and never until this year have I seen such witnesses supporting charges of this kind with such abandoned profligacy. In one case, where men were on their trial for their lives, I felt myself involuntarily shrinking under your Lordship's protection from the miscreant who leaped on the table and announced himself a witness. I was trusting in

God, that these strange exhibitions would be confined to the remote parts of the country. I was astonished to see them parading through the capital; but I feel that the night of unenlightened wretchedness is fast approaching, when a man shall be judged before he is tried—when the advocate shall be libelled for performing his duty to his client, that right of human nature—when the victim shall be hunted down, not because he is criminal, but because he is obnoxious.”

Dr. Drennan was acquitted.

SPEECH

IN DEFENCE OF MR. NAPPER TANDY,

COURT OF KING'S BENCH, MAY 19, 1800.

FOR FLYING FROM A CHARGE OF

High Treason.

MR. NAPPER TANDY, a distinguished member of the Society of United Irishmen, was indicted for High Treason, in 1795. He fled to France, and entered into the service of the French Republic. An act of general amnesty towards persons engaged in the Rebellion of 1798, especially exempted *him*. He was afterwards forced from the protection of the city of Hamburgh, brought home in irons, and put upon his trial.

Mr. Curran, for the Prisoner, said:—

My Lords, and you, Gentlemen of the Jury, I am in this case of Counsel for Mr. Tandy, the Prisoner at the bar. I could have wished it had been the pleasure of the gentlemen who conduct this business on the part of the Crown, to have gone on first: the subject itself is of a very novel nature in this country; but certain it is the right of the Crown, and which the gentlemen have thought proper to follow, to call on the Counsel for the Prisoner to begin; and therefore it is my duty, my Lords, to submit to you, and to explain, under the direction of the Court, to you, Gentlemen of the Jury, what the nature of the question is that you are sworn to try.

An act of Parliament was passed in this country, which began to be a law on the 6th of October, 1798; on that day, it received the royal assent. By that law it is stated, that the Prisoner at the bar had been guilty of acts of treason of many different kinds: and it enacted, that he should stand attainted of high treason, except he should, on or before the first day of December following, surrender himself to one of the Judges of this Court, or to one of his Majesty's Justices of the Peace, for the purpose of becoming amenable to that law, from which he was supposed to have fled, in order to abide his trial for any crime that might have been alleged against him.

It was a law not passed for the purpose of absolutely pronouncing any judgment whatsoever against him, but for the purpose of compelling him to come in and take his trial: and nothing can show more strongly that that act of Parliament has not established any thing touching the fact of the Prisoner's guilt; because it would be absurd, in one and the same breath, to pronounce that he was guilty of high treason, and then call upon him to come in and abide his trial: and the title of the act speaks that it is an act not pronouncing sentence against the Prisoner, but that it is an act in order to compel him to come forward.

This act creates a parliamentary attainder, not founded on the establishment of the Prisoner's guilt of treason, but on his contumacious avoidance of trial, by standing out against a trial by law. I make this observation to you, Gentlemen of the Jury, in order that you may, in the first instance, discharge from your minds any actual belief of any criminality in the Prisoner at the bar; and that for two reasons: first, because a well-founded conviction of his guilt, on the authority of this statute, might have some impression on the minds of men sitting in judgment on the Prisoner; but for a more material reason, I wish to put it from your minds, because his guilt or innocence has nothing to do with the issue you are sworn to try.

Gentlemen, the issue you are called to try is not the guilt or the innocence of the Prisoner; it is therefore necessary you should understand exactly what it is. The Prisoner was called on to show cause why he should not suffer death, pursuant to the enacting clause of the statute; and he has put in a plea, in which he states, that before the time for surrender had expired, namely, on the 24th of November, 1798, seven days before the day that he had for surrendering had expired, he was, by the order of his Majesty, arrested,

and made a Prisoner, in the town of Hamburgh; and in consequence of such arrest, it became impossible for him to surrender himself and become amenable to justice within the time prescribed: and the Counsel for the Crown have rested the case on the denial, in point of fact, of this allegation; and, therefore, the question that you are to try is simplified to this—"I was arrested," says the Prisoner, "whereby it became impossible for me to surrender"—to which the Counsel for the Crown reply, "You have not been arrested at the time alleged by you, whereby it became impossible for you to surrender." This I conceive to be the issue, in point of fact, joined between the parties, and on which it is my duty to explain the evidence that will be offered.

Mr. Tandy is a subject of this country, and had never been in it from the time this Act of Parliament passed, until he was brought into it after his arrest on the 24th of November, 1798: on that day he was in the town of Hamburgh. He had seven days, in which time it was practicable for him to arrive in this country, and surrender himself, according to the requisitions of the act of attainder. Every thing that could be of value to man was at stake, and called on him to make that surrender. If he did not surrender, his life was forfeited—if he did not surrender, his fortune was confiscated—if he did not surrender, the blood of his family was corrupted; and he could leave them no inheritance, but the disgrace of having suffered as a traitor.

Your common sense, Gentlemen, will show you, that where a man is to forfeit his life unless he complies with the conditions of an Act of Parliament—your common sense, your common humanity must show you, that a man ought to be suffered to perform the conditions on which his life depends. It can require no argument to impress upon your mind, that to call on a man to surrender himself on pain of death, and by force to prevent him from surrendering, goes to an atrocity of oppression that no human mind can contemplate without horror.

But it seems that the Prisoner at the bar was a man of too much consequence to the repose of all civilized nations, to the great moral system, I might almost say, to the great physical system of the universe, to be permitted to act in compliance with the statute that called upon him to surrender himself upon pain of death. The wisdom of the entire Continent was called upon to exercise its mediation on this most momentous circumstance—the diplomatic wisdom of

Germany was all put into action on the subject—the enlightened humanity of the North was called on to lend its aid. Gentlemen, you know as well as I the princely virtues and imperial qualifications, the consummate wisdom and sagacity of our steadfast friend and ally, the Emperor of all the Russias; you must feel the awe with which he ought to be mentioned: his sacred person has become embodied in the criminal law of England, and it has become almost a misprision to deem of him or speak of him but with reverence. I feel that reverence for him; and I deem of him and conceive him to be a constellation of all virtue—compared with whose radiance the Ursa-major twinkles only as the glow-worm: and, Gentlemen, what was the result of the exercise of this combination of wisdom? That James Napper Tandy ought not to be got rid of in the ordinary way. They felt an honest and a proper indignation, that a little community like Hamburgh should embezzle that carcase which was the property of a mild and merciful government: they felt a proper indignation, that the senate of Hamburgh, under the present sublime system, should defraud the mercy of the Government of the blood of the Prisoner, or cheat the gibbet of his bones, or deprive the good and loyal ravens of this country of his flesh—and accordingly, by an order issued to these miserable inhabitants of the town of Hamburgh, who were made to feel that common honesty and common humanity can only be sustained by a strength not to be resisted, they were obliged to break the ties of justice and hospitality—to trample on the privileges that every stranger claims; they were obliged to suffer the Prisoner to be trampled on, and meanly, and cruelly, and pitiably to give up this unfortunate man to the disposal of those who could demand him at such a price.

If a surrender, in fact, had been necessary on the part of the Prisoner, certainly a very material object was achieved by arresting him: because they thereby made it impossible for him to avail himself of the opportunity. They made it impossible for him to avail himself of the surrender, if the reflection of his mind led him to it. If a sense of the duty he owed his family led him to a wish, or to an intention, of availing himself of the remaining time he had to surrender, they were determined he should not take advantage of it. He had been guilty of what the law deems a crime, that is, of flying from justice, though it does not go to the extent of working a corruption of blood: but by this act of power—by this act of tyrannic force, he was prevented from doing

that which every Court of Justice must intend he was willing to do—which the law intends he would have done—which the law gave him time to do—which the law supposes he might have done the last hour, as well as the first. He was on his passage to this country—that would not have taken up a third part of the time that had now elapsed; but by seizing on him in the manner he was arrested, it became impossible for him to surrender himself, or become amenable to justice. But, Gentlemen, the Prisoner, when he was arrested, was treated in a manner that made it impossible for him to do any act that might have been considered as tantamount to a surrender. He was confined in a dungeon, little larger than a grave—he was loaded with irons—he was chained by an iron that communicated from his arm to his leg; and that so short, as to grind into his flesh. In such a state of restriction did he remain for fifteen days; in such a situation did he lie in a common vault; food was cut into shapeless lumps, and flung to him by his filthy attendants as he lay on the ground, as if he had been a beast: he had no bed to lie on—not even straw to coil himself up in, if he could have slept. In that situation he remained in a foreign country for fifteen days of his long imprisonment; and he is now called to show good cause why he should not suffer death, because he did not surrender himself, and become amenable to the law. He was debarred all communication whatsoever: if he attempted to speak to the sentinels that guarded him, they could not understand him; he did make such kind of indications of his misery and his sufferings as could be conveyed by signs, but he made them in vain; and he is now called on to show good cause wherefore he did contumaciously and traitorously refuse to surrender himself, and become amenable to the law.

Gentlemen of the Jury, I am stating facts that happened in a foreign country; will you expect that I should produce witnesses to lay those abominable offences before you in evidence? It was not in the power of the Prisoner at the bar to procure witnesses; he was not of importance enough to call on the armed civilization of Europe, or on the armed barbarity of Europe, to compel the inhabitants of the town where he was imprisoned, to attend at the bar of this Court to give evidence for the preservation of his life; but though such interposal could not be obtained to preserve his life, it could be procured for the purposes of blood. And this is one reason why the rights of neutral

states should be respected ; because, if an individual, claiming those privileges, be torn from that sanctuary, he comes without the benefit of the testimony of those that could save his life. It is a maxim of law, that no man shall lose any thing, much less his life, by the non-performance of a condition, if that non-performance had arisen by the act of God, or of the party who is to avail himself of the condition: that the impossibility so imposed shall be an excuse for the non-performance of the condition: that is the defence the Prisoner relies upon here. “ Why did you not surrender, and become amenable to justice? Because I was in chains.”—“ Why did you not come over to Ireland? Because I was a prisoner in a grave in the town of Hamburgh.”—“ Why did you not do something tantamount to a surrender? Because I was unpractised in the language of the strangers, who could not be my protectors, because they were also my fellow-sufferers.” But he may push this reasoning much farther; the statute was made for the express purpose of making him amenable. When the Crown seized him at Hamburgh, it thereby made him amenable, and so satisfied the law. It could not seize him for execution as an attainted person, for the time had not arrived at which the attainder could attach. The King, therefore, seized him as a man liable to be tried, and yet he calls upon him to suffer death, because he did not make himself amenable by voluntary surrender; that is, because he did not do that which the King was pleased to do for him, by a seizure, which made it at once unnecessary and impossible for him to do by any voluntary act. Such is the barbarity and folly that must ever arise, when force and power assume the functions of reason and justice. As to his intention after the arrest, it is clearly out of the question. The idea of intention is not applicable to an impossible act. To give existence to intention, the act must be possible, and the agent must be free. Gentlemen, this, and this only, is the subject on which you are to give a verdict. I do think it is highly honourable to the gentleman who has come over to this country, to give the Prisoner at the bar the benefit of his evidence; no process could have compelled him: the inhabitants of foreign countries are beyond the reach of process to bring witnesses to give evidence. But we have a witness, and that of the highest respectability, who was himself at Hamburgh at the time Mr. Tandy was arrested, in an official situation. We will call Sir James Crawford, who was then the King’s representative in the town of

Hamburgh. We will show you, by his evidence, the facts that I have stated; that before the time allowed to the Prisoner to surrender had elapsed, Sir James Crawford did, in his official situation, and by orders from his own Government, cause the person of Mr. Tandy to be arrested in Hamburgh. Far am I from suspecting, or insinuating against Sir James Crawford, that any of the cruelties that were practised on that abused and helpless community, or on my abused client, were committed at his instance or personal sanction; certain am I that no such fact could be possible.

I told you before, Gentlemen, that the principal question you had to try was, the fact on which the parties had joined issue; the force and arrest alleged by the Prisoner; and the denial of that force by the Counsel for the Crown. There is one consideration, that I think necessary to give some attention to. What you may think of the probable guilt or innocence of the Prisoner, is not within the question that you are to decide; but if you should have any opinion of that sort, the verdict given in favour of the Prisoner can be no preclusion to public justice, if after your verdict they still call for his life; the utmost that can follow from a verdict in his favour would be, that he will be considered as a person who has surrendered to justice, and must abide his trial for any crime that may be charged against him. There are various ways of getting rid of him, if it is necessary to the repose of the world that he should die. I have said, if he has committed any crime, he is amenable to justice, and in the hands of the law: he may be proceeded against before a jury, or he may be proceeded against in another and more summary manner: it may so happen that you may not be called upon to dispose finally of his life or of his character. Whatever verdict a jury can pronounce upon him can be of no final avail. There was, indeed, a time when a jury was the shield of liberty and life: there was a time, when I never rose to address it without a certain sentiment of confidence and pride; but that time is past. I have now no heart to make any appeal to your indignation, your justice, or your humanity. I sink under the consciousness that you are nothing. With us, the trial by jury has given place to shorter, and no doubt, better modes of disposing of life. Even in the sister nation, a verdict can merely prevent the duty of the hangman; but it never can purge the stain which the first malignity of accusation, however falsified by proof, stamps indelibly on the character of an "acquitted felon." To speak proudly of it to you

would be a cruel mockery of your condition; but let me be at least a suppliant with you for its memory. Do not, I beseech you, by a vile instrumentality, cast any disgrace upon its memory. I know you are called out to-day to fill up the ceremonial of a gaudy pageant, and that to-morrow you will be flung back again among the unused and useless lumber of the constitution: but trust me, the good old trial by jury will come round again; trust me, Gentlemen, in the revolution of the great wheel of human affairs, though it is now at the bottom, it will reascend to the station it has lost, and once more assume its former dignity and respect; trust me, that mankind will become tired of resisting the spirit of innovation, by subverting every ancient and established principle, and by trampling upon every right of individuals and of nations. Man, destined to the grave,—nothing that appertains to him is exempt from the stroke of death,—his life fleeth as a dream, his liberty passeth as a shadow. So, too, of his *slavery*—it is not immortal; the chain that grinds him is gnawed by rust, or it is rent by fury or by accident, and *the wretch is astonished at the intrusions of freedom, unannounced even by the harbinger of hope.* Let me, therefore, conjure you, by the memory of the past, and the hope of the future, to respect the fallen condition of the good old trial by jury, and cast no infamy upon it. If it is necessary to the repose of the world that the Prisoner should die, there are many ways of killing him—we know there are; it is not necessary that you should be stained with his blood. The strange and still more unheard-of proceedings against the Prisoner at the bar, have made the business of this day a subject of more attention to all Europe than is generally excited by the fate or the suffering of any individual. Let me, therefore, advise you seriously to reflect upon your situation, before you give a verdict of meanness and of blood, that must stamp the character of folly and barbarity upon this already disgraced and degraded country. *Acquitted.*

CHALLENGE OF A JUROR.

Mr. CURRAN, in addressing a Jury impanelled to try the validity of a Challenge, at Down Assizes, in 1795, thus most eloquently characterized the person objected to:—

“ This is no common period in the history of the world, (said Mr. Curran), they are no ordinary transactions that are now passing before us. All Europe is shaken to its centre; we feel its force, and are likely to be involved in its consequences. There is no man who has sense enough to be conscious of his own existence, who can hold himself disengaged and unconcerned amidst the present scenes:— and, to hear a man say that he is unbiassed and unprejudiced, is the surest proof that he is both. Prejudice is the cobweb that catches vulgar minds; but the prejudices of the present day float in the upper regions—they entangle the lofty heads—they are bowing them down—you see them as they flutter, and hear them as they buz. Mr. ——— has become a very public and a very active man: he has his mind, I doubt not, stored with the most useful and extensive erudition—he is clothed with the sacred office of a minister of the gospel—he is a magistrate of the county—he is employed as agent to some large properties—he is reputably connected, and universally esteemed, and therefore is a man of no small weight and consideration in this county. He has more than once positively sworn that he applied to the High-sheriff—that he struck off no names but those that wanted freeholds; but to-day he finds that freeholders were struck off *by his own pen*—he tells you, my Lords, and Gentlemen triers, with equal modesty and ingenuity, that he has made a *mistake*—he returns eighty-one names to the Sheriff—he receives blank summonses, fills what he deems convenient, &c. Gracious heaven! what are the Courts of Justice? what is Trial by Jury? what is the country brought to? Were it told in the Courts above—were it told in other countries—were it told in Westminster-Hall, that such a man was permitted to return nearly one half of the grand panel of the county, from one particular district,—a district under severe distress,—to which he is agent, and on which, with the authority he possesses, he is able to bring great calamity! He ascends the pulpit with the gospel of benignity and peace—he endeavours to impress himself and others with its meek and holy spirit:—he descends—throws off the purple—*seizes the insurrection act in the one hand, and the whip in the other—flies by night and by day after his game; and, with his heart panting, his breath exhausted, and his belly on the ground in the chase, he turns round, and tells you that his mind is unprejudiced—that his breast is full of softness and humanity!*”

SPEECH

AT CORK ASSIZES, IN 1803.

THE KING v. SIR HENRY HAYES.

Abduction.

FOR THE PROSECUTION.

ALTHOUGH Mr. Curran related the facts of the case to the Jury at considerable length, it is not necessary to give more than a brief statement of them here.

The Prisoner at the bar, Sir Henry Hayes, was a widower, with several children. Miss Mary Pike, for forcibly carrying away whom he stood indicted, was the daughter of Mr. Samuel Pike, one of the Society of Friends, in the city of Cork, who, after a long life of persevering and successful industry, died advanced in years, leaving her, his only child, entitled to his very large property. At the time of the transaction, she was living in the house of Mr. Cooper Penrose. No expense was spared to give her every accomplishment, and her mind was formed to the principles of modesty and decorum, characteristic of that respectable sect of which her father was a member. Sir Henry Hayes had heard of her, and her property, and never, by any accident, had he seen her, even for a moment, until he went to mark her out the victim of his projected crime. Some time before the 22d of July, in the year 1797, he rode down to the country residence of Mr. Penrose, built in a very beautiful situation, and attracting the curiosity of strangers, who frequently went to see it. He walked about the grounds as one of these casual visitors; and, paying his respects to Mr. Penrose, that gentleman conducted him to whatever objects he supposed might gratify his curiosity. He affected to be much entertained, and lingered about the grounds till the hour of dinner: when Mr. Penrose, with a good-natured and honest turn of mind, invited Sir Henry Hayes to dinner. The invitation was accepted. He placed himself at the friendly and unsuspecting board, marked his victim, and took his departure. Mrs. Pike, the widow, mother of the

prosecutrix, was then in Cork, in a dangerous state of health. The Prisoner caused a letter to be written, in a form similar to the hand-writing of Doctor Gibbings, the physician of Mrs. Pike, in these words:—"Dear Sir,—Our friend, Mrs. Pike, is taken suddenly ill; she wishes to see Miss Pike; we would recommend despatch, as we think that she has not many hours to live. Yours, Robert Gibbings." Addressed "To Mr. Cooper Penrose." On this letter being communicated by Mr. Penrose to Miss Pike, she rose from her bed between one and two o'clock in the morning, and in an inclement night left the house of Mr. Penrose, in his carriage, attended by two female relations, one of them his daughter. When they had advanced about half way to Cork, the carriage was suddenly met by four or five men. They ordered the coachman to stop. One of them was dressed in a great coat, and armed with pistols, and had the lower part of his face concealed, by tying a handkerchief round it. The ladies, exceedingly terrified, asked, as well as extreme terror would permit, what they sought for; they were answered, "They must be searched:" on looking about, they observed another chaise stationed near the place where they were detained. Miss Pike was forcibly taken out of the carriage from her friends, and placed in the other chaise, in which she found a woman who turned out to be Sir Henry Hayes' sister. The traces of Mr. Penrose's chaise were then cut, and the ladies that came in it left to find their way as well as they could, and return in the dark. The carriage into which the prosecutrix was put, drove off towards Cork, and proceeded to the seat belonging to the Prisoner at the bar, called Vernon Mount, in the liberties of the city. At the bottom of his avenue, which is of steep ascent, and of considerable length, the horses refused to go on; upon which the Prisoner rode up to the chaise, dismounted from his horse, which he gave to an attendant, opened the door, took the Prosecutrix out, and carried her, struggling in his arms, the whole length of the avenue, to his house; when he arrived there, he forced her up stairs, where she saw a man, attired in somewhat like the dress of a priest; and she was then told, that she was brought there to marry the Prisoner at the bar. She was in the power of an inexorable ravisher, and surrounded by his accomplices: she looked in every mean and guilty countenance; she saw the base unfeeling accomplices induced by bribe, and armed for present force, bound and pledged by the community of guilt and danger, by the felon's

necessity, to the future perjury of self-defence. A sort of ceremony took place; something was muttered in a language, which she partly did not hear, and partly could not understand: she was then his wife—she was then Lady Hayes! A letter was then to be written by her, to apprize her miserable relations of their new affinity: a pen was put into her hand, and she consented to write, in hopes that it might lead to her deliverance; but neither entreaties nor menaces could prevail upon her to write the odious name of her ravisher. She subscribed herself by the surname of her departed father; a ring was forced upon her finger; she tore it off, and indignantly dashed it from her; she was then forced into an adjoining chamber, and the Prisoner brutally endeavoured to push her towards the bed.

My Lord, and Gentlemen of the Jury (said Mr. Curran), you will soon see this young lady. You will see that whatever grace or proportion her person possesses, it does not seem formed for much power of resistance, or of self-defence. But there is a last effort of sinking modesty, that can rally more than the powers of nature to the heart, and send them to every fibre of the frame, where they can achieve more than mere vulgar strength can do upon any ordinary occasion: that effort she did make, and made it with effect; and in that instance, innocence was crowned with success. Baffled and frustrated in his purposes of force, he sought to soften, to conciliate. He expostulated, he supplicated. “And do you not know me?” said he. “Don’t you know who I am?”—“Yes,” answered she, “I do know you; I do now remember you did go to my cousin’s, as you say you did. I remember your mean intrusion—you are Sir Henry Hayes.” How naturally do the parties support their characters! The criminal puts his questions under the consciousness of guilt—as if under the forecast of his present situation. The innocent victim of that guilt regards him already as his prosecutrix; she recognizes him, but it is only to identify him as a malefactor, and to disclaim him as an husband. Gentlemen, she remained in this captivity, until her friends got intelligence of her situation. Justice was applied to. A party went to the house of the Prisoner, for the purpose of enlarging her. The Prisoner at the bar had fled. His sister, his accomplice, had fled. They left behind them Miss Pike, who was taken back by her relations. Informations were lodged immediately. The Prisoner absconded. It would be base and scandalous to suffer a crime of that kind to pass with impunity, without doing

every thing that could be done to bring the offender to justice. Government was apprized of it. Government felt as it ought. There was offered by proclamation, a reward to a considerable amount for taking the Prisoner. The family of Miss Pike did as they ought. They offered a considerable sum, as the reward for his apprehension. For some time he kept in concealment; the rewards were offered in vain—the process of the law went on—an indictment, to the honour of this city, to the honour of the national character, was found—they proceeded to the outlawry of the Prisoner. What I have stated hitherto reflects honour upon all persons concerned, except the unhappy man at the bar, and his accomplices; but what I am about to relate, is a circumstance that no man of feeling or humanity can listen to without indignation. Notwithstanding that outlawry; notwithstanding the publicly offered rewards, to the amount of near one thousand pounds, for the apprehension of the Prisoner at the bar—(would to God the story could not be told in a foreign country! would to God it were not in the power of those so ready to defame us, to adduce such a circumstance in corroboration of their charge!)—for near two years did the Prisoner live in public, almost in the heart of your city; reading in every newspaper, over his tea, the miserable proclamation of impotent public justice, of the laws defiled and trampled upon. This second city in the nation was made the hiding-place; no! no! not the hiding-place, where guilt hid its head; but the receptacle where it walked abroad, unappalled, and threw your degraded city into the odious predicament of being a sort of public accessory and accomplice in his crime, by giving it that hideous appearance of protection and impunity. Here he strayed, basking in the favour of a numerous kindred and acquaintance, in a widely extended city. Sad reverse! It was not for guilt to fly! It was for guilt to stand, and bay at public justice! It was only for innocence to betake itself to flight! It was not the ravisher that fled. It was the helpless female, the object of his crime, the victim of his felony! It was hers to feel that she could despair even of personal protection in that country which harboured and cherished the delinquent! It was she who was hunted, a poor fugitive from her family and her home; and was forced to fling herself at the feet of a foreign nation, a suppliant for personal protection. She fled to England, where she remained for two years. A few months ago, previous to the last term, a letter was written and sent

to Miss Pike, the Prosecutrix, by the Prisoner. The purport of it was, to state to her, that his conduct to her had been honourable and delicate, and asserting, that any lady possessed of the smallest particle of humanity, could not be so sanguinary as to wish for the blood of an individual, however guilty; intimating a threat, that her conduct upon this occasion would mark her fate through life; desiring her to withdraw her advertisements; saying, he would abide his trial at the assizes of Cork—boasting his influence in the city in which he lived—thanking God he stands as high as any man in the regards of rich and poor—of which the inefficacy of her present and former rewards must convince her. He thought, I suppose, that an interval of two years, during which he had been an outlaw, and had resided among his friends, had brought the public mind to such a state of honourable sympathy in his favour, as would leave any form of trial perfectly safe. After this he thought proper to appear, and the outlawry was reversed without opposition by Counsel for the prosecution; because their object was not to take any judgment of outlawry, upon which he might be executed; but to admit him to plead to the charge, and take his trial by a jury of his country. He pleaded to that indictment in the Court above, and accordingly he now stands at the bar of this Court for the purpose of trial. The publicity of his living in this city, of his going to festivals and entertainments, during the course of two years, did impress the minds of the friends of this unhappy lady, with such a despair of obtaining public justice, that they did struggle hard, not, as it is said, to try the offence by a foreign jury; but, to try the offence at a distant place in the capital, where the authority of the Court might keep public justice in some sort of countenance. That application was refused: and justly did you, my Lord, and the learned Judges, your brethren, ground yourselves upon the reason which you gave. “We will not,” said you, “give a judicial sanction to a reproach of such a scandalous
“atrociousness upon any county in the land, much less upon the
“second city in it.”—“I do remember,” said one of you, “a
“case, which happened not twenty years since. A similar
“crime was committed on two young women of the name of
“Kennedy; it was actually necessary to guard them through
“two counties with a military force as they went to prosecute;
“that mean and odious bias, that the dregs of every com-
“munity will feel by natural sympathy with every thing base,
“was in favour of the Prisoners. Every means were used to

“try and baffle justice, by practising upon the modesty and
 “constancy of the prosecutrixes, and their friends: but the
 “infatuated populace, that had assembled together to cele-
 “brate the triumph of an acquittal, were the unwilling spec-
 “tators of the vindication of the law. The Court recollected,
 “that particular respect is due to the female, who nobly
 “comes forward to vindicate the law, and gives protection to
 “her sex. The Jury remembered what they owed to their
 “oaths, to their families, to their country. They felt as be-
 “came the fathers of families; and foresaw what the hideous
 “consequence would be of impunity, in a case of manifest
 “guilt. They pronounced that verdict which saved their
 “characters; and the offenders were executed.” I am glad
 that the Court of King’s Bench did not yield to the despair
 which had taken place in the minds of those who were anxious
 to bring the prosecution forward. I am glad the Prisoner
 was sent to this bar, in order that you may decide upon it. I
 have stated to you, Gentlemen of the Jury, the facts that I
 conceive material—I have stated that it was necessary, and my
 duty as Counsel for the Crown, to give you an exact idea of
 the nature of the offence, of the evidence, and of the law;
 that you may be enabled to combine the whole case together,
 and to pronounce such a verdict as shall fairly decide the
 question, which you are sworn to try, between the Prisoner
 and the public. Any thing I say, either as to the fact, or
 as to the law, ought not to attract any thing more than bare at-
 tention for a single moment. It should make no impression
 upon your belief, unless confirmed by credible evidence.
 I am merely stating facts from instruction; but I am not a
 witness. I am also obliged, as I told you, to make observa-
 tions as to the law, but that is wholly submitted to the
 Court; to which it is your duty, as well as mine, to bow
 with all becoming deference and respect.

My Lord, the Prisoner is indicted as a principal offender,
 upon the statute; and therefore, it is necessary that the Jury
 should understand what kind of evidence is necessary to sus-
 tain that charge. Formerly there was a distinction taken
 by Courts of Justice between two species of principals; the
 one, a principal at the doing of the very act; the other, a
 principal in the second degree, who was then considered as
 an accessory at the fact: a distinction in point of law,
 which, as Mr. Justice Foster observes, was a great inconve-
 nience in the course and order of proceeding against ac-
 complices in felony; tending, as it plainly did, to the total
 obstruction of justice in many cases, and to great delay

in others; and which induced the Judges, from a principle of true political justice, to come into the rule now established: "That all persons present, aiding and abetting, are principals." Mr. Curran then proceeded to show, what kind of presence it is, that will make a man concurring in the crime, in judgment of the law, "present, aiding and assisting:" which to explain, he read the words of the last-mentioned writer as follows: "When the law requireth the presence of the accomplice at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence; such a presence as would make him an eye or ear witness of what passeth." And then exemplified this in the case that he puts. "Several persons set out together, or in small parties, upon one common design, be it murder, or other felony; or for any other purpose, unlawful in itself; and each taketh the part assigned him: one to commit the fact, others to watch at proper stations, to prevent a surprise, or favour, if need be, the escape of those who are more immediately engaged; they are all (provided the fact be committed), in the eye of the law, present at it. For it was made a common cause with them, each man operated in his station, at one and the same instant, towards the same common end: and the part each man took, tended to give countenance, encouragement, and protection, to the whole gang, and to ensure the success of their common enterprise." He then applied this statement of the law to the case, and said, if the Prisoner at the bar formed a design of doing the illegal act with which he is charged, namely, running away with Miss Pike, in order to marry her, or defile her; if he projected the perpetration of it by dividing his accomplices in such manner, as that each may contribute his part to its success; that it was made a common cause; that what each man did, tended to secure the success of the common enterprise; then every person so acting, although not an eye or ear witness of what was done, yet in the eye of the law is guilty. He is a principal, and punishable as such. He then illustrated this by a supposition, that some should guard at Mr. Penrose's bounds; others guard at different stations on the road; others guard the bridge; others remain at the house of Vernon Mount. In that case, he should not hesitate to say, in point of law, that the man stationed at the back door of Mr. Penrose's house (supposing her to be taken out by violence), the men guarding on the road, and at the bridge; nay, the priest that waited at Ver-

non Mount to celebrate the marriage, were all a combination of one common power; acting each man in his station, to produce the intended effect; and, as such, were all equally principals in the offence. But in the present case it was not necessary to argue upon a constructive presence; for here was an actual presence: if what he stated should be supported by witness, there was full ground to convince the Jury, that Sir Henry Hayes was the person in disguise, who put her into his carriage, when taken out of Mr. Penrose's; particularly when the circumstance is considered, that he went to the house in order to identify her person, for that knowledge of her person would have been useless, unless he had been present at the first taking of her. If the Jury believes he was there at such first taking, he was actually present and guilty. But, supposing the Jury to doubt, strange as the doubt must be, yet if there shall be evidence to satisfy them that the Prisoner, at the bottom of the hill leading to his house, took her out of his carriage, and led her to the house, that is, as to him, a taking and carrying away, clearly within the statute. There could not be the least doubt, that every step the chaise proceeded from Mr. Penrose's to Vernon Mount, every man who joined the cavalcade, and became an assistant in the project, became a principal in the entire transaction, and guilty of carrying her away, contrary to the statute. In further illustration, he supposed this case: a highwayman stops a traveller, and proceeds to rob him; and another comes up to the assistance of that robber; there is not the least doubt, that the man who joins in the robbery a little later, is equally guilty with the former in the eye of the law. He applied this to the present case.

Thus I have stated, said Mr. Curran, the nature of the case, and what I conceive to be the law touching that case. I know what kind of defence may be set up. There are some defences, which, if they can be established clearly, must acquit the Prisoner. If he did not do this, if she was not taken away, or if Sir Henry took no share in the transaction, there can be no doubt in the case. It will be for your consciences to say, whether this be a mere tale of the imagination, unsupported by truth, and uncorroborated by evidence. It is material, however, to state to you, that, as soon as guilt is once established in the eye of the law, nothing that the party can do, can have any sort of retrospect, so as to purge that criminality, if once completed. It is out of the power of the expiring victim of a death-blow, to give

any release or acquittal to his murderer; it is out of the power of any human creature, upon whom an illegal offence has been committed, by any act of forgiveness to purge that original guilt; and, therefore, the semblance of a marriage is entirely out of the case. In the case of the Misses Kennedy, the young ladies had been obliged to submit to a marriage, and cohabitation for a length of time; yet the offenders were most justly convicted, and suffered death. It is, therefore, necessary for you to keep your minds and understandings so fixed upon the material points of the charge, as that, in the course of the examination, no side-long view of the subject may mislead or divert your attention. The point before you is, whether the crime was once committed; and if so, 'nothing after happening can make any sort of difference upon the subject. It has been (continued he) my most anxious wish to abstain, as far as was consistent with my duty, from every the remotest expression of contumely or disrespect to the unhappy Prisoner at the bar; or to say or to do any thing that might unhinge his mind or distract his recollection, so as to disable him from giving his whole undisturbed reflection to the consideration of his defence; but it is also a sacred duty, which every man placed in my situation owes to public justice, to take care, under the affectation of false humanity, not to suffocate that charge which it is his duty to unfold, nor to frustrate the force of that evidence which it is his duty to develope. Painful must it be to the Counsel, to the Jury, and the Court, who are bound by their respective duties to prosecute, to convict, and to pronounce, and to draw down the stroke of public justice, even upon the guilty head; but despicable would they all be, if, instead of surrendering the criminal to the law, they could abandon the law to the criminal; if, instead of having mercy upon outraged justice and injured innocence, they should squander their disgraceful sympathy upon guilt alone. Justice may weep; but she must strike, where she ought not to spare. We too ought to lament; but, when we mourn over crimes, let us take care that there be no crimes of our own, upon which our tears should be shed. Gentlemen, you cannot be surprised that I hold this language to you. Had this case no reference to any country but our own, the extraordinary circumstances attending it, which are known to the whole nation, would well warrant much more than I have said. But you cannot forget, that the eyes of another country also are upon you: another country, which is now the source of

your legislation. You are not ignorant of what sort of character is given of us there; by what sort of men, and from what kind of motive. Alas! we have no power of contradicting the cruel calumnies that are there heaped upon us, in defiance of notorious truth, and of common mercy and humanity; but, when we are there charged with being a barbarous race of savages, with whom no measures can be held, upon whose devoted heads legislation can only pour down laws of fire, we can easily by our own misconduct furnish proof that a much less willing belief may corroborate their evidence, and turn their falsehood into truth. Once more, and for the last time, let me say to you, you have heard the charge. Believe nothing upon my statement. Hear and weigh the evidence. If you doubt its truth, acquit without hesitation. By the laws of every country, because by those of eternal justice, doubt and acquittal are synonymous terms. If, on the other hand, the guilt of the Prisoner shall unhappily be clearly proved, remember what you owe to your fame, your conscience, and your country. I shall trouble you no further, but shall call evidence in support of the indictment; and I have not a doubt, that there will be such a verdict given, whether of conviction or acquittal, as may hereafter be spoken of, without kindling any shame in yourselves, or your country.

Guilty—Death.—The sentence of the Prisoner was afterwards commuted to fourteen years' transportation.

SPEECH

IN THE HOUSE OF COMMONS, DUBLIN, FEBRUARY 6, 1789,

ON MOTION FOR AN

ADDRESS ON THE KING'S ILLNESS.

Mr. CURRAN said,—

I oppose the Address, as an Address of delay. I deeply lament the public calamity of the King's indisposition: it is not so welcome a tale to me as to call for any thanks to the messenger that brings it. Instead of thanks for communicating it *now*, it should be resented as an outrage upon us

that he did not communicate it before. As to thanks for his wishes for Ireland, it is a strange time for the noble Marquis to call for it. I do not wish that an untimely vote of approbation should mix with the voice of a people's lamentation: it is a picture of general mourning, in which no man's vanity ought to be thrust in as a figure. But if it is pressed, what are his pretensions? One gentleman (Mr. Boyd), has lost hundreds a year by his arts, and defends him on that ground; another (Mr. Corry), praises his economy for increasing salaries in the Ordnance—the economy of the Noble Lord is then to be proved only by public or by private losses. Another right honourable gentleman (the Attorney-General), has painted him as a man of uncouth manners, much addicted to vulgar arithmetic, and therefore entitled to praise. But what have his calculations done? They have discovered that a dismounted trooper may be stript of his boots, as a public saving, or that a mutilated veteran may be plundered of half the pittance of his coals, as a stoppage for that wooden leg, which perhaps the humane Marquis might consider as the most proper fuel to keep others warm.

But a learned gentleman (Mr. Woolfe) has defended the paragraph, as in fact meaning nothing at all. I confess I find the appeal to the compassion of the public stronger than that to their justice. I feel for the reverses of human fate. I remember this very suppliant for a compliment, to which he pretends only because it is no compliment, drawn into this city by the people, harnessed to his chariot, through streets blazing with illuminations; and now, after more than a year's labour at computation, he has hazarded on a paragraph stating no one act of private or of public good; supported by no man that says he loves him; defended, not by an assertion of his merit, but by an extenuation of his delinquency.

For my part, I am but little averse to accede to the sentiment of an honourable friend who observed, that he was soon to leave us, and that it was harsh to refuse him even a smaller civility than every predecessor for a century had got. As for me, *I do not oppose his being borne away from us in the common hearse of his political ancestors; I do not wish to pluck a single faded plume from the canopy, nor a single rag of velvet that might flutter on the pall.* Let us excuse his manners, if he could not help them; let us pass by a little peculation, since, as an honourable member says, it was for his brother; and let us rejoice that his kindred

were not more numerous. But I cannot agree with my learned friend who defends the conduct of the noble Lord, on the present occasion. The Viceroy here, under a party that had taken a peculiar line in Great Britain, should not have availed himself of his trust to forward any of their measures: he should have considered himself bound by duty and by delicacy to give the people the earliest notice of their situation, and to have religiously abstained from any act that could add to the power of his party, or embarrass any administration that might succeed him. Instead of that, he abused his trust by proroguing the two Houses, and has disposed of every office that became vacant in the interval, besides reviving others that had been dormant for years. Yet the honourable member says he acted the part of a faithful steward. I know not what the honourable member's idea of a good steward is; I will tell him mine. A good steward, if his master was visited by infirmity or by death, would secure every article of his effects for his heir; he would enter into no conspiracy with his tenants; he would remember his benefactor, and not forget his interest. I will also tell him my idea of a faithless, unprincipled steward. He would avail himself of the moment of family distraction; while the filial piety of the son was attending the sick bed of the father, or mourning over his grave, the faithless steward would turn the melancholy interval to his private profit; he would remember his own interest, and forget his benefactor; he would endeavour to obliterate or conceal the title-deeds; to promote cabals among the tenants of the estate, he would load it with fictitious incumbrances; he would reduce it to a wreck, in order to leave the plundered heir no resource from beggary, except continuing him in a trust which he had been vile enough to betray. I shall not appropriate either of these portraits to any man: I hope most earnestly that no man may be found in the community, whose conscience would acknowledge the resemblance of the latter.

I do not think the pitiful compliment in the Address worthy a debate or a division; if any gentleman has a mind to stigmatize the object of it by a poor, hereditary, unmeaning, unmerited panegyric, let it pass; but I cannot consent to a delay at once so dangerous and so disgraceful.

SPEECH,

IN THE HOUSE OF COMMONS, DUBLIN, 1790,

ON INCREASED SALARIES TO THE STAMP-DUTY OFFICERS.

Mr. CURRAN said:—

I rise with that deep concern and melancholy hesitation, which a man must feel who does not know whether he is addressing an independent Parliament, the representatives of the people of Ireland, or whether he is addressing the representatives of corruption: I rise to make the experiment; and I approach the question with all the awful feelings of a man who finds a dear friend prostrate and wounded on the ground, and who dreads lest the means he should use to recover him may only serve to show that he is dead and gone for ever. I rise to make an experiment upon the representatives of the people, whether they have abdicated their trust, and have become the paltry representatives of Castle influence: it is to make an experiment on the feelings and probity of gentlemen, as was done on a great personage, when it was said, "Thou art the man." It is not a question respecting a paltry Viceroy; no, it is a question between the body of the country and the administration; it is a charge against the Government, for opening the batteries of corruption against the liberties of the people. The grand inquest of the nation are called on to decide this charge; they are called on to declare whether they would appear as the prosecutors or the accomplices of corruption: for though the question relative to the division of the Boards of Stamps and Accounts is in itself of little importance, yet will it develope a system of corruption tending to the utter destruction of Irish liberty, and to the separation of the connexion with England.

Sir, I bring forward an act of the meanest administration that ever disgraced this country. I bring it forward as one of the threads by which, united with others of similar texture, the vermin of the meanest kind have been able to tie down a body of strength and importance. Let me not be supposed to rest here; *when the murderer left the mark of his bloody hand upon the wall, it was not the trace of one finger, but the whole impression which convicted him.**

* There is a popular little story, which relates, that a murderer, intending to cover the whole mark of his blood-stained hand with dust, left that of one

The Board of Accounts was instituted in Lord Townshend's administration: it came forward in a manner rather inauspicious; it was questioned in Parliament, and decided by the majority of the five members who had received places under it. Born in corruption, it could only succeed by venality. It continued an useless Board until the granting of the stamp duties in Lord Harcourt's time: the management of the stamps was then committed to it, and a solemn compact was made that the taxes should not be jobbed, but that both departments should be executed by one Board. So it continued till it was thought necessary to increase the salaries of the commissioners in the Marquis of Buckingham's famous administration; but then nothing was held sacred: the increase of the Revenue Board, the increase of the Ordnance, thirteen thousand pounds a year added to the infamous Pension List, these were not sufficient, but a compact, which should have been held sacred, was violated, in order to make places for Members of Parliament. How indecent! two county members prying into stamps! What could have provoked this insult? I will tell you: you remember when the sceptre was trembling in the hand of an almost expiring monarch; when a factious and desperate English minister attempted to grasp it, you stood up against the profanation of the English, and the insult offered to the Irish Crown; and had you not done it, the union of the empire would have been dissolved. You remember this; remember then yourselves—remember your triumph: it was that triumph which exposed you to submit to the resentment of the Viceroy; it was that triumph which exposed you to disgrace and flagellation. In proportion as you rose by union, your tyrant became appalled; but when he divided, he sunk you, and you became debased. How this has happened, no man could imagine; no man could have suspected that a minister without talents could have worked your ruin. *There is a pride in a great nation that fears not its destruction from a reptile*; yet is there more than fable in what we are told of the Romans, that they guarded the Palladium, rather against the subtlety of a thief, than the force of an invader.

I bring forward this motion, not as a question of finance, not as a question of regulation, but as a penal inquiry; and the people will now see whether they are to hope for help within these walls, or turning their eyes towards heaven,

finger unconcealed; and that he continued firmly to protest his innocence, until the removal of the dust convicted him, by displaying an impression corresponding exactly with the size of his hand.

they are to depend on God and their own virtue. I rise in an assembly of three hundred persons, one hundred of whom have places or pensions; I rise in an assembly, one third of whom have their ears sealed against the complaints of the people, and their eyes intently turned to their own interest: I rise before the whisperers of the Treasury, the bargainers and runners of the Castle; I address an audience before whom was held forth the doctrine, that the Crown ought to use its influence on this House. It has been known that a master has been condemned by the confession of his slave, drawn from him by torment; but here the case is plain: this confession was not made from constraint; it came from a country gentleman, deservedly high in the confidence of administration, for he gave up other confidence to obtain theirs.

I know I am speaking too plain; but which is the more honest physician, he who lulls his patient into a fatal security, or he who points out the danger and the remedy of the disease?

I should not be surprised if bad men of great talents should endeavour to enslave a people; but, when I see folly uniting with vice, corruption with imbecility, men without talents attempting to overthrow our liberty, my indignation rises at the presumption and audacity of the attempt. That such men should creep into power, is a fatal symptom to the constitution; the political, like the material body, when near its dissolution, often bursts out in swarms of vermin.

In this administration a place may be found for every bad man, whether it be to distribute the wealth of the Treasury, to vote in the House, to whisper, and to bargain, to stand at the door and note the exits and entrances of your members, to mark whether they can earn their wages, whether it be for the hireling who comes for his hire, or for the drunken aide-de-camp who swaggers in a brothel; nay, some of them find their way to the Treasury-bench, the political musicians, or hurdygurdy-men, to pipe the praises of the Viceroy.

Yet notwithstanding the profusion of Government, I ask, what defence have they made for the country, in case it should be invaded by a foreign foe? They have not a single ship on the coast. Is it then the smug aide-de-camp, or the banditti of the Pension-List, or the infantine statesmen, who play in the sunshine of the Castle, that are to defend the country? No, it is the stigmatized citizens. We are now sitting in a country of four millions of people, and our boast is, that they are governed by laws to which themselves consent; but are not more than three millions of the

people excluded from any participation in making those laws? In a neighbouring country, twenty-four millions of people were governed by laws to which their consent was never asked; but we have seen them struggle for freedom—in this struggle they have burst their chains, and on the altar, erected by despotism to public slavery, they have enthroned the image of public liberty.

But are our people merely excluded? No, they are denied redress. Next to the adoration which is due to God, I bend in reverence to the institutions of that religion, which teaches me to know his divine goodness! but what advantage does the peasant of the south receive from the institutions of religion? Does he experience the blessing? No, he never hears the voice of the shepherd, nor feels the pastoral crook, but when it is entering his flesh, and goading his very soul.

In this country, sir, our King is not a resident; the beam of royalty is often reflected through a medium, which sheds but a kind of disastrous twilight, serving only to assist robbers and plunderers. We have no security in the talents or responsibility of an Irish ministry; injuries which the English constitution would easily repel, may here be fatal. I therefore call upon you to exert yourselves, to heave off the vile incumbrances that have been laid upon you. I call you not as to a measure of finance or regulation, but to a criminal accusation which you may follow with punishment. I therefore, sir, most humbly move:—

“That an humble address be presented to his Majesty, praying that he will order to be laid before this House the particulars of the causes, consideration, and representations, in consequence of which the Boards of Stamps and Accounts have been divided, with an increase of salary to the officers; also, that he will be graciously pleased to communicate to this House the names of the persons who recommended that measure.”

[After a long debate, Mr. Curran replied, and concluded with the following observations upon vulgarly intemperate and threatening language, held towards him in the House, by Sir Boyle Roche and other members:—]

We have been told this night (said Mr. Curran), in express words, that the man who dares to do his duty to his country in this House, may expect to be attacked without these walls by the military gentlemen of the Castle. If the army had been directly or indirectly mentioned in the course of the debate, this extraordinary declaration might be attributable

to the confusion of a mistaken charge, or an absurd vindication; but without connexion with the subject, or pretence of connexion with the subject, a new principle of government is advanced, and that is the bayonet; and this is stated in the fullest House, and the most crowded audience I ever saw. We are to be silenced by corruption within, or quelled by force of arms without. Nor is it necessary that those avowed principles of bribery and arms should come from any high personal authority; they have been delivered by the known retailers of administration, in the face of that Bench, and heard even without a murmur of dissent or disapprobation. As to my part, I do not know how it may be my destiny to fall; it may be by chance, or malady, or violence; but should it be my fate to perish the victim of a bold and honest discharge of my duty, I will not shun it. I will do that duty; and if it should expose me to sink under the blow of the assassin, and become a victim to the public cause, the most sensible of my regrets would be, that on such an altar there should not be immolated a more illustrious sacrifice. As to myself, while I live, I shall despise the peril. I feel in my own spirit the safety of my honour, and in my own and the spirit of the people do I feel strength enough to hold that administration, which can give a sanction to menaces like these, *responsible for their consequences to the nation and the individual.**

SPEECH

IN THE HOUSE OF COMMONS, DUBLIN, MAY 15, 1797,

ON PARLIAMENTARY REFORM.

Mr. William Brabazon Ponsonby's plan of Parliamentary Reform, which included Catholic emancipation, being brought forward by the opposition, the Irish Ministers argued, "that the House ought to make a stand, and say *that rebellion must be put down*, before the grievances that *were made its pretext* should be even discussed."

* Mr. Curran shortly afterwards, being insulted in the streets by a Government retainer, challenged and compelled Major Hobart, the Irish Secretary, to fight him, holding him responsible for the conduct of the Castle bravo.

Mr. CURRAN said,—

If reform be only a pretence, and separation be the real objects of the leaders of the conspiracy, confound the leaders by destroying the pretext, and take the followers to yourselves. You say they are a hundred thousand strong:—I firmly believe they are three times the number,—so much the better for you. If these seducers can attach so many followers to rebellion, by the hope of reform through blood, how much more readily will you engage them, not by the promise, but the possession, and without blood. Reform is a necessary change of mildness for coercion; the latter has been tried, and what is its success? The Convention Bill was passed to punish the meetings at Dungannon, and those of the Catholics; the Government considered the Catholic concessions as defeats that called for vengeance—and cruelly have they avenged them; but did that act, or those which followed, put down those meetings?—the contrary was the fact; it most foolishly concealed them. When popular discontents are abroad, a wise government should put them into an hive of glass; you hid them. The association at first was small—the earth seemed to drink it as a rivulet: but it only disappeared for a season:—a thousand streams, through the secret windings of the earth, found their way to one source, and swelled its waters; until at last, too mighty to be contained, it burst out a great river, fertilizing by its exudations, or terrifying by its cataracts. This was the effect of your penal code—it swelled sedition into rebellion. What else could be hoped from a system of terrorism? Fear is the most transient of all the passions—it is the warning that nature gives for self-preservation; but when safety is unattainable, the warning must be useless, and nature does not therefore give it. The administration mistook the quality of penal laws: they were sent out to abolish conventicles; but they did not pass the threshold, they stood centinels at the gates. You thought that penal laws, like great dogs, would wag their tails to their masters, and bark only at their enemies; you were mistaken; they turn and devour those they were meant to protect, and were harmless where they were intended to destroy. Gentlemen, I see, laugh—I see they affect to be still very ignorant of the nature of fear:—this cannot last;—neither, while it does, can it be concealed:—the feeble glimmering of a forced smile is a light that makes the cheek look paler. Trust me, the times are too humanized for such systems of Government—

humanity will not execute them; but humanity will abhor them, and those who wished to rule by such means. We hoped much, and, I doubt not, meant well by those laws; but they have miserably failed us; it is time to try milder methods. You have tried to force the people: but the rage of your penal laws was a storm that only drove them in groups to shelter. Before it is too late, therefore, try the better force of reason, and conciliate them by justice and humanity. Neither let us talk of innovation—the progress of nature is no innovation—the increase of people, the growth of the mind, is no innovation, unless the growth of *our* minds lag behind. If we think otherwise, and consider it an innovation to depart from the folly of our infancy, we should come here in our swaddling-clothes; we should not innovate upon the dress more than the understanding of the cradle.

As to the system of peace now proposed, you must take it on its principles; they are simply two—the abolition of religious disabilities, and the representation of the people. I am confident the effects would be every thing to be wished; the present alarming discontent will vanish, the good will be separated from the ill-intentioned. The friends of mixed government in Ireland are many; every sensible man must see that it gives all the enjoyment of rational liberty, if the people have their due place in the state. This system would make us invincible against a foreign or domestic enemy; it would make the empire strong at this important crisis; it would restore to us liberty, industry, and peace, which I am satisfied can never by any other means be restored.

[Counsels like these, urged by Mr. Curran and his friends, were scornfully rejected, and they resolved to retire from the affectation of Parliamentary deliberation. Mr. Grattan followed Mr. Curran, and concluded an able speech by calling the issue of the American war to the recollection of the House. “If that *lesson*,” said Mr. Grattan, “has no effect upon Ministers, surely I can suggest nothing that will. “We have offered you *our* measure—you will reject it; we deprecate *yours*—you will persevere: having no hopes left to persuade or to dissuade, and having discharged our duty, we shall trouble you no more, and after this day shall not attend the House of Commons.”]

I agree (said Mr. Curran, in conclusion), that unanimity at this time is indispensable; the House seems pretty unanimous for force; I am sorry for it, for I bode the worst

from it: I shall retire from a scene where I can do no good, and where I should certainly disturb that unanimity; I cannot, however, go without a parting entreaty, that men would reflect upon the awful responsibility in which they stand to their country and to their conscience, before they set an example to the people, of abandoning the constitution and the law, and resorting to the terrible expedient of force.

THE END.



Curran, John Philpot,

A new and enlarged collection of speeches containing several of importance,
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